

EXHIBIT

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL PRESCRIPTION : MDL No. 2804
OPIATE LITIGATION :
: Case No. 17-md-2804
THIS DOCUMENT RELATES TO: :
"Case Track Seven" : Judge Dan Aaron Polster

Friday, January 20, 2023

HIGHLY CONFIDENTIAL
SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

Remote videotaped deposition of
J. ANN SELZER, Ph.D., commencing at 9:02 a.m., on the
above date, before Carol A. Kirk, Registered Merit
Reporter, Certified Shorthand Reporter, and Notary
Public.

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23 Michael Hall, Motley Rice
24

1	INDEX TO EXAMINATION	
2	WITNESS	PAGE
3	J. ANN SELZER, PH.D	
4	CROSS-EXAMINATION BY MR. ELSNER	6
	REDIRECT EXAMINATION BY MS. WOHL	232
5	RECROSS-EXAMINATION BY MR. ELSNER	237
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		

1	INDEX TO EXHIBITS		
2	SELZER	DESCRIPTION	PAGE
3	Exhibit 1	Document titled "Appendix,	18
4		Selzer Review of Comments, 2021	
5		Survey," Bates-stamped MR	
6		4371_000001 through 49	
7	Exhibit 3	Evaluation of 2021 Pharmacist	55
8		Workload Survey Conducted by	
9		the State of Ohio Board of	
10		Pharmacy in Support of Case	
11		1:18-op-46326-DAP, Montgomery	
12		County, Ohio Litigation	
13	Exhibit 4	Pharmacist Workload Advisory	97
14		Committee, Approved 4/20/2021,	
15		Bates-stamped MR 4202_000001	
16		through 177	
17	Exhibit 5	Article titled "Exploring the	163
18		Regional Effects of Rising	
19		Health Insurance Costs on	
20		Consumers, Bates-stamped MR	
21		4373_000001 through 24	
22	Exhibit 6	Document titled "Iowa State	199
23		Planning Grant, 2005 Final	
24		Report to the Secretary"	
	Exhibit 7	2021 Pharmacist Workload	218
		Survey, Bates-stamped MR	
		4201_000001 through 219	

1

- - -

2

P R O C E E D I N G S

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4

THE VIDEOGRAPHER: Good morning.

5

We are now on the record. My name is

6

Bill Geigert. I'm a videographer for

7

Golkow Litigation Services.

8

Today's date is January 20, 2023,

9

and the time is 9:02 a.m.

10

This remote video deposition is

11

being held in the matter of the National

12

Prescription Opiate Litigation in the

13

United States District Court, Northern

14

District of Ohio, Eastern Division.

15

The deponent is J. Ann Selzer,

16

Ph.D.

17

All parties to this deposition are

18

appearing remotely and have agreed to

19

the witness being sworn in remotely.

20

Due to the nature of remote

21

reporting, please pause briefly before

22

speaking to ensure all parties are heard

23

completely.

24

All counsel will be noted on the

1 stenographic record.

2 The court reporter is Carol Kirk,
3 and she will now swear in the witness.

4 - - -

5 J. ANN SELZER, PH.D

6 being by me first duly sworn, as hereinafter
7 certified, deposes and says as follows:

8 CROSS-EXAMINATION

9 BY MR. ELSNER:

10 Q. Good morning, Dr. Selzer. My name
11 is Michael Elsner. I'm from the law firm of
12 Motley Rice, and I represent Montgomery County.

13 How are you this morning?

14 A. I'm great.

15 Q. Great. Well, happy Friday. I'm
16 the only person standing between your weekend,
17 so I'm sorry for that, but we'll get through
18 this as best we can.

19 Can you just tell us your full
20 name for the record.

21 A. Jane Ann Selzer.

22 Q. And have you used any other names
23 professionally, a maiden name, for instance?

24 A. I'm sorry?

1 Q. Have you used any other names
2 professionally in your professional work?

3 A. I didn't hear the end of what you
4 said.

5 Q. A maiden name, for instance.

6 A. A maiden name. No. I am -- I go
7 by J., first initial J. Ann Selzer
8 professionally.

9 Q. Okay. Great. Thank you so much.
10 And where do you live?

11 A. I live in Des Moines, Iowa.

12 Q. And how long have you lived there?

13 A. Since -- off and on, but for the
14 last time since 1987, December of 1987.

15 Q. And are you originally from Iowa?

16 A. I'm not.

17 Q. Where are you from originally?

18 A. I was born in Minnesota, and I
19 grew up in Kansas.

20 Q. We're doing this, obviously, today
21 by Zoom. And can you tell me where you're
22 located today during this deposition? Where are
23 you?

24 A. I'm in our -- the Selzer & Company

1 offices in West Des Moines.

2 Q. And is anyone in the room with
3 you?

4 A. There's no one in the room with
5 me.

6 Q. Okay. Other than the box of
7 documents that we sent to you, do you have any
8 other documents or materials, notes or anything
9 else in front of you?

10 A. I have a printed version of the
11 report I submitted and the appendix. I have no
12 other notes.

13 Q. Okay. And your version of the
14 report and the appendix, do you have any notes
15 in there? Have you tagged certain pages?

16 A. I have tagged the page that had to
17 do with -- and I can show it to you if that
18 helps.

19 The number of respondents, the
20 number of people that the surveys were sent to
21 and their response rate.

22 Q. Okay. And what page is that? Is
23 that the appendix or is that --

24 A. I've tagged it both places. It's

1 on page 13 of the report. And it's, you know,
2 in a better format in the appendix on page X-15.

3 Q. Thank you.

4 Any other notes or tags or --

5 A. No.

6 Q. Okay. What about electronic
7 devices? Do you have any cell phones or other
8 devices that you have with you?

9 A. I have a cell phone.

10 Q. Okay.

11 A. That's it.

12 Q. I just ask that during the course
13 of my questioning and answering that you don't
14 refer to anything on your cell phone.

15 A. No, I will not. I'm covering it
16 up.

17 Q. I never thought I had to ask that
18 question, but I did. So now we -- it's like so
19 many things in life. Sometimes you have more
20 questions than you thought you'd need.

21 How is it that you were hired to
22 serve as an expert witness in this case?

23 A. I received an inquiry from a
24 person that I had worked with long, long ago on

1 something completely different who had been
2 asked if he knew someone who was an expert in
3 survey research, and he -- do you need to know
4 his name?

5 Q. I'm guessing it's John Schneider.
6 Is that right?

7 A. John Schneider, that's correct.
8 And he -- I indicated that perhaps I would be
9 interested, and then I was contacted by
10 Aaron Boone, and we had conversations, and it
11 went from there.

12 Q. Okay. And when did Mr. Schneider
13 reach out to you?

14 A. In late November.

15 Q. All right. And when were you
16 retained to work in this matter?

17 A. The very last week, or perhaps
18 even last days, of November.

19 Q. And what was your assignment?

20 A. My assignment was to review a
21 survey that had been conducted by the State of
22 Ohio Board of Pharmacy, and with the specific
23 assignment to review, and to report and offer
24 opinions on what it would have to say about

1 pharmacists and pharmacies and their role in
2 opioid diversion and abuse.

3 Q. And were you asked to study or
4 offer an opinion as to the methodology of the
5 survey or the reliability of the survey?

6 A. Yes. That would be a part of a
7 review of the survey.

8 Q. Okay. Have you ever served as an
9 expert witness before?

10 A. Yes.

11 Q. In what circumstances?

12 A. It was a survey that had been
13 proposed in terms of certifying a class of
14 former and current employees of an organization.
15 And my assignment was to say, "Here's what they
16 propose to do. Is it feasible to do this?" And
17 what is my opinion about the value of such a
18 survey.

19 Q. All right. And who was it that
20 hired you? Who was the client?

21 A. I don't know that I can disclose
22 that. I'm still under the nondisclosure
23 agreement from that project.

24 Q. Well, were you publicly offered as

1 an expert witness in this case, or were you just
2 doing a consulting role?

3 A. I wrote a report. And on the
4 basis of the report, there was no further need
5 for my services.

6 Q. Did you -- were you deposed?

7 A. No.

8 Q. Was there a determination by the
9 court in that case whether you were qualified or
10 not to serve as an expert? Did it reach that
11 point?

12 A. I do not believe it reached that
13 point.

14 Q. And what state was the case
15 pending in?

16 A. I don't know that I remember.

17 Q. How long ago was this?

18 A. This would have been ten years
19 ago, so 2013.

20 Q. Okay. So I think under the
21 federal rules, you're required to -- well, I
22 guess it's in cases where you testified as an
23 expert.

24 So you did not offer trial

1 testimony; is that correct?

2 A. I was not asked to. Correct.

3 Q. Is this the only circumstance in
4 which you've served as an expert witness in the
5 past?

6 A. Qualified, yes; that is, I was a
7 witness to a court proceeding in which my client
8 and the survey I conducted for them was being
9 questioned. And I answered questions from a
10 judge under oath about that.

11 Q. And where did that occur?

12 A. That was here in Iowa.

13 Q. Got it. Okay.

14 And what was the case and who was
15 the client?

16 A. The client was IPERS, which is the
17 Iowa Public Employee Retirement System. And
18 they had been required from -- by the state
19 legislature to conduct a survey of their members
20 about the location of a new headquarters. They
21 were sued by Hy-Vee, which is a grocery store
22 chain. And, as I said, I gave testimony.

23 Q. How do you spell that grocery
24 store chain?

1 A. H-y-V-e-e.

2 Q. What was the outcome of the case?

3 A. I don't -- well, the outcome of
4 the -- of my testimony was that I was found
5 credible and that the judge suggested that --
6 well, I don't actually know what happened. The
7 case went away. So my client was vindicated,
8 and they built the headquarters where my survey
9 suggested.

10 Q. Understood.

11 A. The will of their membership.

12 Q. And were you serving as an expert
13 witness in that case or as a fact witness?

14 A. That's why I said qualified, yes.
15 I was explaining the work I had done. I don't
16 remember -- this was longer ago. This was more
17 like 2008, possibly 2004. I'm sorry.
18 I remember that I did remote testimony because
19 it was caucus day; therefore, it was either in
20 2004 or 2008.

21 Q. It was a pretty rough day for you
22 in terms --

23 A. Well, that's a day you just sit
24 and wait, so ...

1 Q. Oh, I see. Okay. All right.

2 And were you deposed in that case
3 before you offered trial testimony?

4 A. No.

5 Q. Do you remember where the case was
6 pending or did you -- I know you testified
7 remotely. But do you know what courthouse?

8 A. In Sheraton. And you want to --
9 you'd like to know what county that is? I'm not
10 going to get the county right. It's south of
11 Des Moines, closer to the Missouri border.

12 Q. Thank you.

13 Any other cases where you've
14 testified as a fact witness or an expert
15 witness?

16 A. No.

17 Q. And by "testify," I mean both by
18 deposition or at trial.

19 A. Okay. So I did represent myself
20 in district court against a former landlord.

21 Q. Okay.

22 A. So I was both the questioner and
23 the respondent in that case.

24 Q. Did you win?

1 A. I did.

2 Q. Okay.

3 A. I was advised to retire
4 undefeated.

5 Q. Probably good advice.

6 Have you been retained by any
7 other pharmacy in this matter to evaluate the
8 Ohio Board of Pharmacy survey?

9 A. No.

10 Q. Have you been hired by any
11 pharmacies to evaluate any issues with respect
12 to the opioid litigation, other than Kroger?

13 A. No.

14 Q. How do you know John Schneider?

15 A. John Schneider was a colleague of
16 my brother-in-law at the University of Iowa.
17 And I was working on an expansive program of
18 research on sort of reforming health insurance
19 before it was fashionable. And I had the idea
20 to see if we could measure the drag on the Iowa
21 economy of the 15 percent per year increases in
22 health insurance that companies were paying on
23 behalf of their employees.

24 And John Schneider is a health

1 economist. And we connected and chatted a bit.
2 And he did that analysis, which was part of the
3 report that we submitted.

4 Q. And when he reached out to you
5 work on this case, how did he describe what the
6 case was to you?

7 A. In the shortest possible terms.
8 Somebody had asked him if he knew an expert in
9 survey research, and my name came up.

10 Q. And have you read Mr. Schneider's
11 report in this case?

12 A. No.

13 Q. Have you read any other expert
14 reports in this case?

15 A. No.

16 Q. And that includes both the
17 plaintiff and defendant experts; is that true?

18 A. Correct.

19 Q. Okay. I want to -- in the
20 appendix to your report --

21 A. I'm sorry. The terminology is
22 going to be maybe a little funny. I read two
23 depositions, but not any reports that those
24 people would have submitted.

1 Q. Right. I'm sorry. I'm familiar.
2 Those are -- that's the deposition of
3 Mr. McNamee from the Ohio Board of Pharmacy; is
4 that right?

5 A. That's right.

6 Q. And Mr. Davis who works at Kroger;
7 is that right?

8 A. That's right.

9 Q. Okay. Well, your answer was
10 correct. Neither are serving as an expert
11 witness. And I wasn't trying to trick you, but
12 I appreciate your clarification.

13 And is that the only testimony
14 that you've read in the case?

15 A. As far as I recall.

16 - - -

17 (Selzer Deposition Exhibit 1 marked.)

18 - - -

19 BY MR. ELSNER:

20 Q. Okay. And I want to turn to your
21 appendix, which we'll mark as Exhibit 1 to the
22 deposition. It's MR 4371, if you'd like to pull
23 it out. And I want to ask you a few questions
24 about your CV, which starts at the end, as you

1 know, page X-44, X-45, pages 44 and 45 of the
2 appendix.

3 A. Yeah. Do you need me to pull the
4 document out of your file?

5 Q. I do not. It's really there for
6 your benefit if you feel like there's something
7 you'd like to look at. I will assure you it
8 goes much quicker if you don't pull it out each
9 time. But I'm happy to give you that
10 opportunity if you'd ever like to take it, okay?

11 A. Very good.

12 Q. All right. First, Ms. Selzer, is
13 this your -- is this your resumé?

14 A. Yes.

15 Q. Okay. And is it accurate and
16 complete?

17 A. There is one thing that is
18 missing, which are the years that I mentioned in
19 the report itself when I worked for
20 Peter D. Hart Research Associates between 1985
21 and 1987.

22 Q. All right. And what work did you
23 do for them?

24 A. I was a senior research analyst.

1 It's a polling firm in Washington, D.C.

2 Q. Any other errors or corrections
3 you'd like to make in your resumé?

4 A. No.

5 Q. Anything you omitted in the resume
6 other than the correction you just made?

7 A. Well, I've lived a long and happy
8 life, so surely there are things that are
9 omitted. But that are relevant, no.

10 Q. Thank you.

11 You know, I noticed something in
12 your resumé, which is a little uncommon for me.
13 You and I have something in common. We both
14 studied at the University of Reading in England.
15 I don't know that I've met someone
16 professionally that's done that, so ...

17 A. Likewise.

18 Q. -- fates have aligned.

19 You have a master's and a Ph.D. in
20 communication theory and research; is that
21 right?

22 A. That's right.

23 Q. Okay. And can you tell me, what
24 is that?

1 A. That is a discipline that looks at
2 language and symbol systems and how we create
3 meaning and how we attempt to create meaning in
4 the receivers of our messages. And it sort of
5 stretches into -- some of it is psychology, some
6 of it is sociology, some of it is linguistics.
7 But it's a discipline that came out of really
8 public speaking, public address, and ways of
9 understanding how it actually works.

10 Q. Were you required to complete a
11 dissertation for your doctorate degree?

12 A. Yes.

13 Q. And what was that on?

14 A. It was about the gender gap in
15 presidential elections between 1964 and 19 --
16 sorry. 1960 and 1984 -- sorry. 1960 and 1980.
17 And so looking at the -- using the University of
18 Michigan databases of election surveys research
19 and tracking the gender gap and postulating as
20 to why the gender gap might have become a bigger
21 deal over time.

22 Q. And for your master's degree, did
23 you have to write a thesis for your master's
24 degree?

1 A. No.

2 Q. What percentage of your work would
3 you characterize as work in politics, that is,
4 analyzing polling in politics versus the other
5 work that you do?

6 A. It depends on if it's an election
7 year, as you can imagine. I think it's easily
8 half. And I'm gauging that not in terms of the
9 hours that are spent but in terms of the revenue
10 to my company, that that's -- that's my best
11 guess.

12 Q. When was it that you got
13 interested in politics and polling?

14 A. Well, I was interested in data
15 from an early time in my life. So I anticipated
16 when I went to university that I would be
17 involved in some way with gathering data. I had
18 an interest there.

19 After my third year of coursework
20 in my dissertation -- in my doctoral program,
21 I was awarded a congressional fellowship in
22 women's studies and went to Washington for a
23 year and worked on Capitol Hill.

24 And so I obviously was interested

1 in politics before, but that really cemented
2 that I'm interested in gathering data. I'm
3 interested in politics that equals polling.

4 Q. And you're considered one of the
5 best political pollsters in Iowa, true?

6 A. Not just Iowa.

7 Q. The whole country?

8 A. May I boldly say.

9 Q. If you're not going to say it
10 during your deposition, you're rarely given the
11 opportunity.

12 A. I am considered one of the best,
13 if not the best, pollster in Iowa. We've worked
14 nationally and beyond Iowa borders.

15 Q. And that same distinction applies
16 nationally, true?

17 A. It does.

18 Q. Okay. And there have been
19 numerous, numerous articles written about you
20 and your polling activities, true?

21 A. That's true.

22 Q. And you appear on national
23 programs, CNN, all sorts of different channels,
24 to discuss polling in politics; is that fair?

1 A. That's true.

2 Q. And is that how you're best known?

3 A. I am best known as an election
4 pollster, let me put it that way.

5 Q. Okay. Have you ever published any
6 articles related to survey designs and
7 reliability of surveys?

8 A. When I was on the staff of the
9 Des Moines Register, I was assigned to edit a
10 book for newspaper researchers about survey
11 methodology. And I contributed chapters to
12 that, as well as edited chapters that would have
13 dealt with those issues. This would have been,
14 as you can see from my resumé, prior to 1992.

15 Q. And is that a peer-reviewed
16 publication?

17 A. It was a book that was published
18 by the International Newspaper Marketing
19 Association.

20 Q. And I think I saw it here. Is it
21 on your CV? I thought I did, but I'm having
22 trouble finding it.

23 A. Well, it would be under, you
24 know -- I don't know that it is on that. I'm

1 not -- I'm not an academic, so I'm not required
2 to publish in order to advance my career. And
3 so it's not important to me to do so. I talk
4 about survey methodologies, but ...

5 Q. But you haven't published on it
6 aside from serving as an editor to this one
7 particular publication and contributing to some
8 of the chapters; is that fair?

9 A. In terms of publications, that's
10 fair.

11 Q. Okay. And that's what I'm asking.
12 What's the title of that book?

13 A. Probably Newspaper Marketing
14 Research, a primer.

15 Q. And do you recall what chapters
16 you contributed to?

17 A. I contributed to a chapter on
18 sampling. I heavily edited a chapter on
19 questionnaire design. And I contributed a
20 chapter on analysis.

21 Q. Okay. Other than -- and what was
22 the year that this was published?

23 A. Previous to 1992.

24 Q. Do you have --

1 A. 1990, 1991.

2 Q. Okay. All right. Understood.

3 Any other publications on survey
4 design and the reliability of surveys?

5 A. Could you repeat that question?

6 Q. Any other publications other than
7 this one that we just mentioned on the survey
8 design and reliability of surveys?

9 A. Not that I can remember.

10 Q. Okay. Are there any other
11 publications that you've written in any
12 peer-reviewed journals or books that have been
13 peer-reviewed?

14 A. I wrote, while I was a graduate
15 student, an article that was peer-reviewed. Not
16 on this topic.

17 Q. What was the topic?

18 A. The topic -- this was for the
19 Journal of Mass Communication or something. It
20 was a study of a -- the newspaper coverage of a
21 murder trial in Kansas and an analysis using
22 Kenneth Burke's techniques of who is the agent
23 and who is the patient and explaining why it was
24 a surprise verdict from the jury, given what the

1 newspaper coverage was.

2 We got the transcript from the
3 trial and were able to do a rhetorical analysis
4 of that. I had a coauthor on that who was
5 trained as a rhetorician.

6 Q. Okay. And I see on the screen
7 that there's a reference to that where you had
8 received a grant for that work. Is that true?

9 A. That's right. From the Kaltenborn
10 Foundation. That's correct.

11 Q. And that work was in 1983; is that
12 right?

13 A. Yes.

14 Q. Okay. Have you ever taught any
15 courses on the subject of surveys or the design
16 of surveys, the reliability of surveys?

17 A. There have been sections of
18 courses that I've taught that include covering
19 those areas.

20 Q. And where did you teach these
21 courses?

22 A. I was on the faculty of
23 Drake University here in Des Moines for a year
24 working -- and it would have been the -- only in

1 the fall semester. I was working with the
2 capstone course for the public relations
3 department. And the fall semester was devoted
4 to research.

5 Q. And I see here that looks like it
6 was in the fall of 2007, spring of 2008?

7 A. That's right.

8 Q. Okay. Any other -- any other
9 courses that you taught on those subjects?

10 A. Courses in universities?

11 Q. Yes.

12 A. No.

13 Q. Are there other courses that you
14 taught outside of universities on survey design
15 and the reliability of surveys?

16 A. We would have covered those
17 topics. I was on the faculty of the newspaper
18 research council when I was on the staff of the
19 Des Moines Register and for a few years beyond
20 that. And we would bring in newcomers, new
21 newspaper researchers, and teach them about
22 research methods. And it would have covered
23 those things.

24 Q. Have you ever conducted any

1 surveys for any pharmacies?

2 A. No.

3 Q. Have you conducted any surveys for
4 any Board of Pharmacy?

5 A. No.

6 Q. Have you conducted any surveys of
7 pharmacists on behalf of any trade
8 organizations?

9 A. No.

10 Q. Have you ever done any survey work
11 with respect to employment-related issues?

12 A. Can you be more specific?

13 Q. Well, I'm looking for parallels
14 between the survey you examined here from the
15 Ohio Board of Pharmacy and workplace conditions
16 and any other surveys you conducted which are
17 similar to that.

18 A. I'm looking at my list of selected
19 clients here trying to recall if any of these
20 were employee surveys.

21 Q. And just for the record, you're
22 looking at pages 48 and 49 --

23 A. That's right.

24 Q. -- of your appendix?

1 A. That's right.

2 I cannot confirm that any of these
3 were surveys of employees, that I can recall.

4 Q. Were there any surveys done for
5 any of these institutions related to workplace
6 attitudes, feelings, sentiments?

7 A. So the one that I see here that
8 might fall into that category is under
9 "Miscellaneous," the "Equality in the Courts
10 Task Force," which included survey -- was
11 conducted -- paid for, sponsored, by the Iowa
12 Bar Association.

13 And we looked at surveys of
14 attorneys, surveys of court personnel, and I
15 think judges as well, so three surveys to take a
16 look at those issues.

17 Q. When was that done?

18 A. That would have been roughly 1992,
19 '93.

20 Q. Okay. Was it published?

21 A. There was a -- there was a task
22 force report which was published and included,
23 among other -- this was one piece of what they
24 were doing.

1 Q. Anything -- I'm sorry. Go ahead.

2 A. Sorry.

3 It was part of the report.

4 Q. I understand. Okay.

5 Any other surveys related to
6 workplace issues for any of these clients or any
7 other clients?

8 A. Not that I recall.

9 Q. Okay. This list that you've put
10 together on pages 48 and 49 that we've displayed
11 for you here, is this a list of all of your
12 clients that have compensated you for work?

13 A. It is a selected list, but it is
14 by far the vast majority.

15 Q. All right. And by "selected," are
16 there any health care companies, pharmaceutical
17 companies, or pharmacies that you've left off
18 the list?

19 A. No.

20 Q. Okay. All right. Now, this
21 listing, did you actually provide surveys for
22 each of these clients, or were there -- or was
23 there other work that you were hired to perform
24 for them?

1 A. There was other work. Some
2 clients we would do focus groups for them, and
3 sometimes in-depth interviewing for them.
4 Sometimes there's just consulting that they've
5 got, you know, a corpus of research and they
6 want me and my staff to figure out what's useful
7 in it and write a report about that.

8 Q. Okay. I see here that you have
9 GlaxoSmithKline listed under "Health."

10 A. Yes.

11 Q. What type of work did you perform
12 for them?

13 A. This was around the 2008 caucuses.
14 And they approached us to find out about whether
15 the caucus going electric could be activated to
16 be involved with talking about health care and
17 health care reform.

18 Q. Okay. All right. Dr. Selzer, you
19 are not a licensed pharmacist; is that true?

20 A. That's true.

21 Q. Have you ever worked in a
22 pharmacy?

23 A. No.

24 Q. Do you have any experience with

1 the practice of pharmacy?

2 A. No.

3 Q. Okay.

4 A. Beyond being a customer.

5 Q. One thing I didn't see on your
6 list was any kind of political campaigns.

7 Have you been hired by political
8 campaigns to perform either surveys or polling?

9 A. I do not work for candidates who
10 are running for office or political parties.

11 Q. What about political action
12 committees?

13 A. It is rare, and I do my best to
14 find a different way of being paid.

15 Q. Explain that to me.

16 A. I just don't wish to have what
17 appears to be a conflict of interest.

18 Q. So you've done some work for
19 political action committees, but you haven't
20 been compensated by political action committees;
21 is that fair?

22 A. I would say the work that I did
23 was for the 501(c)(3) that had an affiliated
24 501(c)(4), but the work was for the issues that

1 they were interested in.

2 Q. All right. What political action
3 committees, 501(c)(3)s, have you done work for?

4 A. Well, I would distinguish them.
5 I do work for the Environmental Law and Policy
6 Center and they have a 501(c)(4), but my work is
7 for the policy side of the organization.

8 Q. What is the hourly rate that you
9 charge for your work doing polling-related work
10 or, for instance, the work of this Environmental
11 Law and Policy Center?

12 A. I do not work on -- I work on a
13 per project fee rather than an hourly rate, so
14 it's very rare -- while I have some clients that
15 want something relatively short and prefer to do
16 it by an hourly rate, it is -- the vast majority
17 of the work I give a price. They say yes or no.

18 Q. If the Ohio Board of Pharmacy
19 hired you to conduct the survey, give us an
20 estimate as to what you would have charged the
21 Ohio Board of Pharmacy for that work.

22 MS. WOHL: Objection to form.

23 Q. I'm sorry. In a deposition like
24 this -- I apologize. I forgot you haven't done

1 this a lot.

2 From time to time I may ask a
3 question and counsel for Kroger might offer an
4 objection. Even though they've objected, you
5 still need to answer the question, unless she
6 tells you that you're not to answer the
7 question, which she hasn't done yet, okay?

8 A. It is very hard for me to answer
9 the question as you asked it because it presumes
10 that I would have used this methodology and that
11 I wouldn't have done something different, so ...

12 Q. I'm not asking you to presume you
13 would have done it the way the Ohio Board of
14 Pharmacy had done it. I want you to presume you
15 would have done it the way you professionally
16 thought it should have been done. I'm just
17 trying to get a sense of what you earn for this
18 type of work.

19 A. So the ballpark I can give you is
20 that there are very few projects that we do
21 these days that is less than \$50,000.

22 Q. And so given the scope of what the
23 Ohio Board of Pharmacy wanted to do, not what
24 they did, but the intent behind what they wanted

1 to do, and given the size of the pharmacist
2 community in Ohio and the issues that they
3 wanted to address, do you think it would have
4 been at \$50,000, or is it closer to \$100,000?
5 What is your best estimate as to what you would
6 have charged for that work?

7 MS. WOHL: Objection to form.

8 Go ahead.

9 A. And that's -- without having
10 gotten out my bid spreadsheet and sort of
11 figured out how we were going to get the work --
12 the data collected, that's a big piece of it.
13 I can't give you a very good answer beyond what
14 I've already said.

15 Q. How would you have suggested that
16 the data be collected --

17 MS. WOHL: Objection to form.

18 Q. -- if not by e-mail and the way
19 that the Ohio Board of Pharmacy did it?

20 A. I have given that very little
21 thought, so ...

22 Q. Okay. So when you're offering an
23 opinion, an expert opinion, in this case, you're
24 not going to be offering an opinion how you

1 would have conducted the survey?

2 A. I was not assigned to do that.

3 That's correct.

4 Q. Okay. And you're not going to
5 offer that opinion to the jury, correct?

6 A. I have done -- I have not done the
7 mental preparation that I would need to do to
8 answer that.

9 Q. Okay. But it would be at least
10 \$50,000, correct?

11 A. I would say that that is sort of
12 the common starting point for clients.

13 Q. Fair to say that that rate,
14 \$50,000, to conduct a survey prices some
15 organizations and entities out of your services?

16 A. That's correct.

17 Q. Okay. And, in fact, many --
18 I would guess -- and you tell me -- many state,
19 you know, entities don't have the budget to
20 afford a \$50,000-plus survey; is that fair?

21 A. I do not know what they have
22 available or not.

23 Q. Have any of your previous surveys
24 done any work with respect to prescription drug

1 dispensing?

2 A. No.

3 Q. What about drug overdoses?

4 A. No.

5 Q. What about addiction and/or

6 dependency on either licit or illicit

7 substances?

8 A. No.

9 Q. Any surveys on controlled

10 substances like opioids?

11 A. No.

12 Q. Have you done any work with

13 opioids at all?

14 A. No.

15 Q. Any work with respect to the

16 opioid epidemic?

17 A. I pause there because sometimes

18 when we're doing polling, there might be a

19 question about how big a problem as part of a

20 list of things. I do not recall that it -- that

21 that topic was a major area of exploration for

22 any of the polling work I've done.

23 Q. Can you give us some examples of

24 when the opioid epidemic may have been included

1 in a list of concerns, as you just described?

2 A. And to be clear, I'm not saying
3 I remember that it specifically was, but I want
4 to be clear that it might have been. So it
5 could have been for some polling work that I did
6 for Bloomberg News. They might have been
7 interested in that.

8 It could have been for the
9 Des Moines Register Iowa poll. It could have
10 been for other polling work I did for the
11 Indianapolis Star, the Detroit Free Press, that
12 we would be looking at a host of "Here are some
13 concerns and how concerned -- you know, is this
14 a big deal or a little deal in your community,"
15 that kind of thing, and it would have been
16 lumped with education, health care, other sorts
17 of things.

18 Q. Do you have a specific memory of
19 any of the polls specifically listing this as an
20 item?

21 A. I do not.

22 Q. I saw a list of the Iowa Chronic
23 Care Consortium.

24 A. Yes.

1 Q. Can you describe for us the work
2 that you did for them.

3 A. Yes. I had served on the Board of
4 the Iowa Chronic Care Consortium, which was
5 looking at ways to make changes in protocols for
6 health care in order to reduce repeat
7 hospitalizations. And we did a couple of
8 studies looking at people who had been through
9 the program and getting feedback on how it had
10 worked for them.

11 Q. And did any of those issues
12 concern controlled substances?

13 A. Not to my recollection.

14 Q. When was that done?

15 A. I'm looking at my resumé here. So
16 I was on the Board between 2007 and 2014. The
17 work would have been done toward the end of that
18 tenure, so 2013. It would be a reasonable
19 estimate.

20 Q. I notice that you had listed a
21 grocery store as one of your customers; is that
22 true?

23 A. That's true.

24 Q. What grocery store was that?

1 A. Fairway.

2 Q. And that's a regional grocery
3 store in Iowa; is that true?

4 A. It is. It's based in Iowa. It
5 now has stores in adjacent states.

6 Q. What are the ways that a grocery
7 store like Fairway have used surveys as part of
8 their business?

9 A. So I was approached to help them
10 as they were entering markets outside of Iowa
11 where they didn't have the name. They had 100
12 stores in Iowa, and so when they would open a
13 new store, it was not -- it was common for the
14 new community to already be familiar with Iowa.

15 So they wanted to find out what
16 they could learn about their image, about
17 their -- the perception of their assets to
18 customers and their vulnerabilities to
19 customers.

20 And so I proposed a research
21 program, and we did that, and I've done some
22 follow-up research for them from time to time.

23 Q. Are you aware of businesses like
24 grocery stores using surveys to seek customer

1 satisfaction?

2 A. I'm aware of entities that are
3 business-to-consumer based wanting to collect
4 data on customers.

5 Q. Including grocery stores, right?

6 A. Including grocery stores.

7 Q. Okay. And I would assume you
8 wouldn't characterize those surveys as meeting
9 rigorous academic standards in the way they're
10 conducted?

11 Is that a fair assessment, or am I
12 misplaced?

13 MS. WOHL: Objection to form.

14 A. I can't speak to every survey that
15 grocery stores have conducted about whether they
16 meet rigorous scientific methodology.

17 Q. Well, the customer surveys that
18 you're familiar with, are these phone-in
19 surveys? What type of surveys do these
20 service-based industries --

21 A. I can speak to the work I did for
22 Fairway, which included some focus groups. And
23 that included two surveys in two different
24 counties that we took a look at. And those

1 would have been my standard methodology by
2 telephone to a random selection of the
3 community.

4 Q. Okay. Are you familiar with
5 surveys conducted by businesses with respect to
6 customer satisfaction -- you know, sometimes you
7 might get on a receipt, at the bottom it says
8 "Please participate in this customer survey to
9 tell us about how you felt about the service you
10 received today."

11 Are you familiar with those kinds
12 of surveys?

13 A. I'm familiar as a consumer, the
14 same way that anybody -- any other consumer
15 would be.

16 Q. Okay. You've never done one of
17 those surveys yourself, have you?

18 A. That's correct.

19 Q. Have you analyzed any of those
20 types of survey data?

21 A. I have not.

22 Q. Have you participated in one?

23 A. Hardly ever.

24 Q. Fair to say most people don't?

1 A. I have no idea.

2 Q. I noticed, before we just move
3 from your CV, that you -- one of your perhaps
4 earlier jobs, maybe your first, at least on the
5 CV, related to providing jury research and
6 consulting for trial attorneys; is that right?

7 A. That's right.

8 Q. Okay. Can you explain that
9 experience to me, what it was that you did.

10 A. So I was the research manager for
11 a litigation support firm here in West
12 Des Moines, and we did work of many different
13 kinds for our clients. So we might do a
14 community attitude survey to get a feel for what
15 the jury pool was thinking. We did change of
16 venue surveys to figure out how much might be
17 known. There were trial simulations as well.

18 Q. Okay. Did you help pick juries?

19 A. I did not help pick juries.

20 Q. Was this work that you did for a
21 single firm, or is this work you did for several
22 law firms?

23 A. During this -- during my short
24 tenure there, it was for several law firms.

1 Q. Do you recall the name of the law
2 firm that you did the most work for during that
3 time?

4 A. Sidley Austin.

5 Q. Fair to say that most of the
6 clients of the firm were for defense firms?

7 A. I was not there long enough to
8 have figured out the ratio of plaintiff to
9 defense.

10 Q. Okay. What is your hourly rate in
11 this case?

12 A. \$300.

13 Q. And do you offer a different
14 hourly rate for testimony?

15 A. \$500.

16 Q. And how did you come up with these
17 rates?

18 A. I had one client who did the
19 occasional projects with me that were on an
20 hourly rate. And the last time that was
21 requested of us, I went back and looked at some
22 previous invoices and realized I had been
23 charging \$200 an hour since 2007, and I thought
24 it was time to update.

1 Q. Okay. All right. And why do you
2 charge a different rate for testimony versus
3 writing your report?

4 A. It's a different preparation.
5 It's a different skillset to have to be ready to
6 do that, and it's more of my time.

7 Q. And today for the testimony you're
8 offering this morning and throughout today, is
9 that at the \$500 an hour rate?

10 A. I would presume it is. I'm under
11 oath.

12 Q. I just wasn't sure if it was trial
13 testimony or all testimony. That's why I asked.

14 You hired someone to work with you
15 on the report; is that true?

16 A. I have staff --

17 Q. And --

18 A. -- who assisted me.

19 Q. I'm sorry. Please go ahead.

20 A. I have an assistant who assisted
21 in all of the work that I do.

22 Q. Okay. And is that Michelle
23 Yeoman?

24 A. It is.

1 Q. Okay. And what type of work does
2 she do for your company?

3 A. Whatever I tell her. So for this
4 project, it would have been helping gather some
5 materials, helping put my sources in
6 bibliographic form. She proofreads everything
7 that I do.

8 We have professional conversations
9 about the content. So she's a good sounding
10 board, having read all of my work for the past
11 14, 15 years.

12 So as needed, projects assigned as
13 needed.

14 Q. And what is her background and
15 experience?

16 A. She has been with my firm for at
17 least 15 years, and beyond that, it's easy to
18 lose count of how many years. And I trained
19 her. So she did not have research experience
20 before she came to my firm.

21 Q. Is she a college graduate?

22 A. She is a college graduate.

23 Q. What was her degree in?

24 A. I believe her major was in English

1 with a minor in religious studies. It has come
2 in very handy from time to time.

3 Q. I've learned that myself in my own
4 professional experience.

5 And did she do any of the work
6 reviewing and analyzing the comments that were
7 contained in the surveys?

8 A. She repeated the work I had done
9 in terms of doing searches for particular words.
10 There she replicated what I had done to be sure
11 I caught every instance. And she was able to
12 figure out how to count how many comments were
13 in the 2020 survey because they didn't include
14 in their spreadsheet any identification for
15 respondent numbers.

16 Q. Okay. But she didn't count the
17 survey responses for the 2021 surveys; is that
18 right?

19 A. Didn't need to because there was a
20 column in the spreadsheet that listed that. She
21 also created the data tables that you see that
22 are in the report comparing the 2020 and the
23 2021 surveys.

24 Q. Okay. And was she responsible for

1 the slides in the appendix --

2 A. Yes.

3 Q. -- putting those together? Okay.

4 Any other work she performed?

5 A. That covers as much of it as I can
6 recall.

7 MR. ELSNER: I'm going to mark as
8 the next exhibit, Exhibit 2, the invoice
9 you submitted, which is MR 4372, or
10 displayed on the screen for you as well.
11 This will be Exhibit 2.

12 MS. WOHL: Mike, I could actually
13 use a break, if you don't mind, if we're
14 getting into a new exhibit, just a
15 really quick one.

16 MR. ELSNER: Sure. We can take
17 that down. We'll go off the record.

18 THE VIDEOGRAPHER: Off the record,
19 9:54.

20 (Recess taken.)

21 THE VIDEOGRAPHER: We are back on
22 the record at 10:00 a.m.

23 BY MR. ELSNER:

24 Q. Dr. Selzer, we marked as Exhibit 2

1 the invoice which is on the screen. It's also
2 MR 4372.

3 Is this the invoice that you
4 submitted for your work in this matter?

5 A. Yes.

6 Q. Okay. Is this the only invoice
7 that you submitted?

8 A. Yes.

9 Q. Okay. It indicates here that you
10 began work on November 29, 2022 on the second
11 page of the invoice.

12 Does that sound about right to
13 you?

14 A. Yes.

15 Q. Okay. And then your report was
16 submitted on December -- or your last billing
17 entry was December 8, 2022; is that right?

18 A. That's right.

19 Q. Okay. And does this encompass all
20 of the time and the work that you performed to
21 submit your expert report in this case?

22 A. Yes.

23 Q. I noticed that in your description
24 of the work that you did, there's a reference to

1 reading -- checking an old report.

2 Can you describe for me what that
3 means.

4 A. Yes. We -- you asked me
5 previously about any work I had done as
6 providing expert opinion, and I -- that was
7 about ten years ago, in 2013, and I went back to
8 review what I had done there for two reasons.

9 One, it was helpful to -- because
10 I don't do this as part of my regular work -- to
11 review how I established what my expertise was
12 and to update that, and to review what sources
13 I found useful and to figure out what would be
14 useful for this particular project and to see if
15 I could pull up those sources and just learn
16 from past work that I had done.

17 Q. Okay. It wasn't a report that
18 related in any way to any work with respect to
19 the Ohio Board of Pharmacy survey or opioids in
20 general, true?

21 A. That's correct.

22 Q. Okay. And which case was this?
23 Was this the case where you were serving as a
24 testifying expert but didn't give a deposition,

1 or is this the case where you were qualified and
2 did offer trial testimony?

3 A. Neither of those. This was the
4 case where I was hired to review a proposed
5 survey that would be used to qualify a class for
6 a class action lawsuit of former and current
7 employees. And I wrote a report, and that was
8 the end of the work that I needed to do.

9 Q. Can you give us -- tell us how
10 much time you've spent working on the case since
11 December 8, 2022?

12 A. Until this week, I would say
13 minimal.

14 Q. What happened this week?

15 A. In preparing for today.

16 Q. How much time did you prepare for
17 today's testimony?

18 A. I don't have my time sheet in
19 front of me. But obviously I reread the report,
20 reread the appendix, those sorts of activities,
21 to get ready for it.

22 Q. What's your best estimate of the
23 amount of time that you've spent in January to
24 get ready for your testimony today?

1 A. I would -- you know, I'm a
2 researcher. I like to check the data.

3 Q. 10 hours, 20 hours, 30?

4 A. I would say 20, but it could be
5 10. It feels -- it lives in your brain, and not
6 all of those are billable hours, so ...

7 Q. Yes. I mention that to my
8 partners all the time.

9 How many times did you meet with
10 counsel to prepare for today's testimony?

11 A. We met via Zoom earlier this
12 week --

13 Q. For how long?

14 A. -- to look at the technology that
15 would be needed.

16 Again, I don't have time sheets in
17 front of me. That would have been the majority
18 of the time.

19 Q. When was that? What day this
20 week?

21 A. Tuesday, I believe.

22 Q. Okay. And who was present for
23 that prep session? Was Ms. Wohl present?

24 A. Yes.

1 Q. Anyone else?

2 A. There was another person from her
3 firm. It was somebody I had not been familiar
4 with.

5 Q. Okay. So that was on Tuesday.
6 How long did that last?

7 A. I'm going to say two hours.

8 Q. All right. And then did you meet
9 via Zoom any other day this week, other than
10 Tuesday?

11 A. I don't believe so.

12 Q. Any conference calls this week to
13 prep?

14 A. We chatted this morning just to
15 make sure, again, that everything was the way it
16 was supposed to be, that I had not opened the
17 box, to be sure that I didn't have any notes in
18 the room, that sort of thing.

19 Q. Okay. Did you meet with anyone
20 from Kroger to prepare your testimony today?

21 A. No.

22 Q. Did you meet with anyone from
23 Kroger to prepare your expert report?

24 A. No.

1 Q. Had you otherwise met or discussed
2 the case with anyone from Kroger?

3 A. No.

4 Q. Outside the materials that are
5 cited in your report and the report itself and
6 the appendix, did you review any other documents
7 to prepare to testify today?

8 A. The one item that was not -- that
9 was inadvertently left off of my sources list
10 was the long form complaint, and I did read
11 that.

12 Q. Anything else?

13 A. No.

14 - - -

15 (Selzer Deposition Exhibit 3 marked.)

16 - - -

17 BY MR. ELSNER:

18 Q. Okay. Thank you.

19 I'm going to mark as Exhibit 3 a
20 copy of your report, and it's MR 4370. If you'd
21 like to look at that or you can look at your
22 version that you have before you. We'll also
23 display it on the screen.

24 First, let's start, is this a copy

1 of the expert report that you've offered in this
2 case?

3 And we'll mark it as Exhibit 3.

4 A. Yes.

5 Q. And is that your signature on the
6 front?

7 A. It is.

8 Q. Does this report contain all of
9 the opinions you intend to offer in the case?

10 A. Yes.

11 Q. Is there anything, sitting here
12 today, that you'd like to change or alter about
13 anything that's written in the report?

14 A. No.

15 Q. Okay. Didn't discover any errors
16 as you were preparing for your deposition?

17 A. I saw -- I saw a typo or two.

18 Q. Anything substantive?

19 A. I did not see anything
20 substantive.

21 Q. Okay. Do you intend to offer any
22 opinions outside what you've written in this
23 report?

24 A. I do not.

1 Q. Is there any material that you
2 wish you had in drafting the report but that you
3 didn't have?

4 A. My assignment was to evaluate the
5 survey. So I don't -- so no.

6 Q. Okay. Did you have enough time to
7 put your report together? It looks like you
8 were hired on November 29th, and you had to
9 issue a report, and your last billing date was
10 December 8th, true?

11 A. That's true.

12 Q. Did you have enough time to do the
13 work that you did?

14 A. Yes.

15 Q. Would you have preferred to have
16 more time?

17 A. I don't know that there would have
18 been added value beyond the typo situation.

19 Q. All right. Did you write the
20 report?

21 A. I did.

22 Q. Are these your words?

23 A. They are.

24 Q. Did anyone else write any part of

1 the report?

2 A. Well, I cite sources, but did I
3 assign anybody to write any part of this report?

4 No.

5 Q. Your assistant didn't write any
6 part of it?

7 A. No.

8 Q. Okay. On page 17 of your report,
9 you have a list of "Sources" and "References."
10 Do you see that?

11 A. Yes.

12 Q. Okay. And are these all of the
13 sources and references that you relied upon in
14 drafting your report?

15 A. As I mentioned earlier, this list
16 does not include the long form complaint in this
17 case, and I did read that.

18 Q. Other than the complaint that was
19 filed in this case, are there any other
20 materials that you relied upon to form the basis
21 of your opinions here?

22 A. No.

23 Q. Is there anything you considered
24 but decided not to rely upon in writing your

1 report?

2 A. Yes.

3 Q. What was that?

4 A. These would have been different
5 publications of -- and specifically with regard
6 to survey methodology, and so I -- rather than
7 including them all, I chose the one or two that
8 were the most germane and most succinct. But I
9 did look at other things.

10 Q. The sources that you relied upon,
11 are any of those sources from peer-reviewed
12 publications?

13 A. The sources that are listed here
14 beyond the State of Ohio Board of Pharmacy
15 surveys themselves and the depositions are not
16 the kind of publication that would be
17 peer-reviewed.

18 So I don't believe they were.

19 Q. So is it your opinion, then, that
20 the literature with respect to offering opinions
21 concerning survey design and the reliability of
22 surveys is not contained in peer-reviewed
23 journals?

24 MS. WOHL: Objection to form.

1 A. The articles that are cited here
2 are often textbook sorts of things that are --
3 that peer-reviewed journals are sort of looking
4 at how things are moving forward in terms of
5 methodology or applying methodology.

6 So someone explaining, for
7 example, generalized ability, that -- it's not
8 meaningful to put that in a peer-reviewed
9 journal. That's not where it would appear.

10 Q. Okay. So my question is, is the
11 survey results and reliability, that there's not
12 peer-reviewed journal material on that subject?

13 Is that what your testimony is?

14 MS. WOHL: Objection to form.

15 A. My testimony is I am not widely
16 versed in peer-reviewed journals not being an
17 academic where I would be required to be
18 publishing in peer-reviewed journals.

19 So I can't speak for the entire
20 field. I wouldn't go looking to peer-reviewed
21 journals if what I want are people discussing
22 common concepts and survey research.

23 Q. So the sources that you relied
24 upon that you thought were most relevant with

1 respect to the opinions you had to offer based
2 on your experience and expertise were the
3 references that you cite here?

4 A. That's correct.

5 Q. And those are generally not
6 peer-reviewed sources, true?

7 A. That's correct.

8 Q. Okay. You mentioned that you
9 found them in books, but I didn't see a book,
10 but I might have missed it. Was there a
11 particular book that you relied on in forming
12 your opinions?

13 A. There was not a particular book.
14 There were books that I consulted that are in my
15 modest research methods library here at my
16 office.

17 The easiest way these days to go
18 about finding things as they may appear in books
19 is to Google it. So the second reference there,
20 by the fact that the name of the source is in
21 italics signifies to me that that, indeed, was a
22 book.

23 Q. Are you talking --

24 A. About how I accessed it, but

1 that's not how I accessed it.

2 Q. I see. All right. So you believe
3 that this was an extract of a book?

4 A. Yes, as I believe the
5 bibliographic entry indicates.

6 Q. Okay. And you're talking here
7 about the second source under References,
8 "Errors in Survey Research and their Threat to
9 Validity and Reliability"?

10 A. That's right.

11 It would be similar for under
12 Sources, the Frank Newport chapter out of the
13 book, "Where America Stands." "Where America
14 Stands" would be a book, and here was the
15 chapter.

16 Q. I see. All right. And so your
17 methodology here was to basically Google certain
18 topics and themes and then look for particular
19 articles that discuss those. And then you
20 selected some of those to rely upon to as the
21 basis of your opinions here.

22 Is that fair?

23 A. That's fair.

24 Q. Is there anything that you relied

1 upon in forming the basis of your opinions here
2 that is not listed in the report, other than the
3 long form complaint?

4 A. No.

5 Q. When did you read the long form
6 complaint?

7 A. I would say -- you want a date?

8 Q. No, just give me a rough idea. It
9 was over the course of just a few weeks you did
10 the report, right?

11 A. That's correct.

12 Q. Oh, I see it here. You spent an
13 hour reading it on December 3rd in Exhibit 2.

14 Does that sound about right to
15 you?

16 A. That sounds about right to me.

17 Q. Okay. It's a pretty quick read in
18 an hour. Did you read the whole thing?

19 A. Did I read every single word?
20 I don't know that I did, but I read -- I looked
21 at every page.

22 Q. Fair to say you skimmed it?

23 A. The parts that appear in my report
24 where I'm pulling from paragraphs, this would

1 be -- this was the genesis of the idea to do a
2 terminology search in the comments.

3 Give me a moment. I'll see if
4 I can pull that page number up.

5 Q. You're talking about page 8 of
6 your report?

7 A. Yes, page 8 of my report, and the
8 bottom of page 7, making specific references to
9 paragraph numbers. This was what I found most
10 helpful. But as I say, I looked at -- I likely
11 looked at every page.

12 Q. So you're talking about pages 7
13 and 8 of Exhibit 3, your report in the case?

14 A. That's right.

15 Q. And you have a list of shorthand,
16 I guess, little summaries or descriptors of what
17 you thought certain allegations were in the
18 complaint --

19 A. Yes.

20 Q. -- that you're relating to this
21 topic?

22 A. The topics that were related to
23 the allegations.

24 Q. Right. Okay.

1 And these are the ones that you
2 located in your hour-long search, correct?

3 A. Yes. That was part of the result
4 of that, taking a look at that.

5 MR. ELSNER: All right. We can
6 take that down for a second.

7 BY MR. ELSNER:

8 Q. I just have some general questions
9 for you. I just want to get an understanding of
10 what your basis of knowledge is on certain
11 topics.

12 Would you agree with me that
13 there's an opioid epidemic in the United States?

14 A. Are you asking me for a
15 professional opinion on that or as an ordinary
16 person who reads newspapers and news magazines
17 and watches news shows?

18 Q. Let's do both.

19 MS. WOHL: Objection.

20 Q. Are you able to offer an expert
21 opinion that there's an opioid epidemic or there
22 is not an opioid epidemic in the United States
23 or in Ohio?

24 MS. WOHL: Objection.

1 A. I don't have the expertise in
2 opioid, period. So in terms of what constitutes
3 an epidemic, I don't know that I have the
4 knowledge to say that's the right word as far as
5 there.

6 I have heard it mentioned before.
7 On the consumer side, as a member of an informed
8 public, I hear that term.

9 Q. Okay. And any reason to
10 believe -- based on your understanding, do you
11 believe there is an opioid epidemic in the
12 United States?

13 MS. WOHL: Objection to form.

14 A. This is a matter of what I'm
15 exposed to through my own consumption of news.
16 As I said, I've heard the terminology used.
17 I don't have a professional idea of what
18 constitutes an epidemic. So --

19 Q. What's your just lay general sense
20 with the materials that you've reviewed and
21 read? Do you believe that there's an opioid
22 epidemic in the U.S.?

23 MS. WOHL: Objection to form.

24 A. Are you asking professionally, or

1 are you asking me personally?

2 Q. I'm asking you personally.

3 MS. WOHL: Objection to form.

4 A. Personally I am aware of changes
5 in laws and regulations regarding the
6 prescribing of opioids, and it's -- I have no
7 reason to think there isn't a problem in terms
8 of overprescribing.

9 Q. So your understanding and belief
10 with respect to the opioid epidemic is that it's
11 caused by overprescribing of medications?

12 MS. WOHL: Objection to form.

13 A. I would say that's part of it.
14 I do not know beyond that which I would have
15 personal observation of.

16 Q. Okay. And this isn't an area that
17 you've studied at all, opioid --

18 A. I have not studied this at all.

19 Q. Okay. And you haven't examined
20 how many people in the United States have been
21 impacted by the opioid epidemic?

22 A. I have not studied that at all.

23 Q. Have you looked at any surveys or
24 studies of the number of people impacted by the

1 opioid epidemic in the United States?

2 A. Not to my recollection.

3 Q. What about in the State of Ohio?

4 Did you look at any surveys or studies related
5 to --

6 A. I did not.

7 Q. Okay. And you didn't rely on any
8 of those types of materials to form the basis of
9 your opinions here; is that true?

10 A. Correct.

11 Q. Okay. What about Montgomery
12 County? What do you know about Montgomery
13 County? Do you know how many people live there?

14 A. I do not.

15 Q. Have you ever been there?

16 A. Not to my knowledge, but I've been
17 to Ohio, so ...

18 Q. Well, we'll start -- that's a
19 start.

20 Do you know any of the major
21 cities in Montgomery County?

22 A. I don't. But I might, but I don't
23 know it by the name of the county.

24 Q. Have you looked at any of the data

1 related to the number of people in Montgomery
2 County that overdosed as a result of
3 prescription opioids?

4 A. I have not sought that out. To
5 the extent that that was included in the long
6 form complaint, I would have read it there.

7 Q. But other than the complaint, you
8 haven't done any work to determine how many
9 people have overdosed in Montgomery County; is
10 that fair?

11 A. That's fair.

12 Q. Okay. And you didn't look in
13 preparing your expert opinions here with respect
14 to the impact of the opioid epidemic in Ohio,
15 true?

16 A. That was not my assignment, so I
17 did not do it.

18 Q. And you didn't review any
19 documents from the Ohio Board of Pharmacy or the
20 coroner's office or other public health
21 literature about the impact of the opioid
22 epidemic in Ohio; is that true?

23 A. I only reviewed the surveys from
24 the Ohio Board of Pharmacy.

1 Q. Now, some experts in this case
2 have offered opinions and data concerning the
3 number of opioids that have been dispensed in
4 Ohio.

5 Are you familiar with how many
6 opioids have been dispensed in Ohio?

7 MS. WOHL: Objection to form.

8 Q. What about --

9 A. That is not my area of expertise.
10 No.

11 Q. Okay. And you didn't look to see
12 how many opioids had been dispensed in
13 Montgomery County; is that true?

14 A. That's true.

15 Q. Okay. And you didn't look to see
16 how many opioids had been dispensed by Kroger,
17 correct?

18 A. Again, I want to clarify. When
19 you say "look to see," did I go out and search
20 for that information? And I said it might have
21 been -- it might have appeared in the long form
22 complaint, but I did not go and look for it. It
23 was not part of my assignment.

24 Q. Okay. If we look and just talk in

1 general about your report, which we've marked as
2 Exhibit 3, is it fair to say that you've kind of
3 divided the report into two parts?

4 One is the survey relevant to the
5 litigation, and then secondly you discuss some
6 potential challenges regarding the methodology
7 of the survey.

8 Is that a fair characterization of
9 the two types of opinions you generally offer?

10 A. That is a fair characterization.

11 Q. I want to start with the relevance
12 part. And you say on page 2 of your report --
13 and I'm happy to have you take a look at it --
14 that -- hold on one second. You've been asked
15 about your professional opinion concerning the
16 usefulness of -- this is on page 2. We're
17 displaying page 4. I'm sorry.

18 MR. ELSNER: I'm sorry. 2 at the
19 bottom, 4 at the top. Sorry, Gina.

20 BY MR. ELSNER:

21 Q. In the second paragraph under the
22 "Executive Summary," it reads, "I've been asked
23 for my professional opinion of the usefulness of
24 this survey in understanding the role of

1 pharmacists and pharmacies in opioid abuse and
2 diversion."

3 Do you see that?

4 A. I do.

5 Q. Okay. And so was that what you
6 were asked to do?

7 A. Yes.

8 Q. Okay. And then your conclusion
9 is, "This survey does not provide data on that
10 topic. It's not a survey about pharmacists' and
11 pharmacies' role in opioid abuse and diversion."

12 Is that your opinion?

13 A. It is.

14 Q. Okay. And I think you also said
15 that the pharmacists' concerns about patient
16 safety generally, that you didn't feel that you
17 could extract that to specific concerns about
18 dispensing opioids, and that those are
19 unsubstantiated; is that true?

20 MS. WOHL: Objection to form.

21 A. My opinion is the data do not
22 support that conclusion.

23 Q. And the basis for that is that
24 there are no questions about opioids, right?

1 A. That's part of my -- of what I'm
2 taking into account.

3 Q. And there are no questions about
4 patient requests for controlled substances?

5 A. That's right.

6 Q. Okay. And so it's on the basis of
7 the fact that those types of questions weren't
8 asked, you concluded that it would be an
9 unsubstantiated leap to believe that the answers
10 related to the survey concerned opioids, true?

11 A. True.

12 Q. Is it your opinion that no
13 correlation can be made between the results of
14 the survey and Ohio pharmacists' views on safely
15 dispensing medications, including opioids?

16 A. Well, the word "correlation" is a
17 technical statistical term, and these data do
18 not -- did not offer a way to correlate these
19 findings with something that was not in the
20 survey, which were any questions about opioid
21 abuse.

22 Q. Okay. So it's your opinion that
23 in order to answer the question of whether
24 dispensing -- whether the safety -- let me

1 strike all that. Let's start over. That was
2 pretty messy.

3 It's your opinion that the safety
4 concerns expressed by the survey respondents
5 cannot be tied to opioids because there was not
6 a question about opioids, nor a question about
7 requests for controlled substances from
8 patients; is that right?

9 A. That's partially right. We did an
10 additional analysis of the comments that some
11 pharmacists typed in with the idea that this
12 might reveal sort of the unstated subtext of
13 what the pharmacists were thinking about.

14 And we found relatively few
15 comments, including the word "opioid," and my
16 report goes through other things that we
17 searched for in order to see if there were --
18 there was sufficient evidence from what they
19 volunteered, that they had opioid abuse on their
20 minds as they were answering questions about
21 patient safety.

22 Q. And so in your mind, if they had
23 opioid abuse on their minds, then they would
24 have included a comment about it.

1 Is it possible that they had
2 controlled substances on their minds but didn't
3 list that in the comment?

4 MS. WOHL: Objection to form.

5 A. It is possible. But looking at
6 these data and what I had in front of me, the
7 percentage of pharmacists who included a comment
8 about opioids was less than 1 percent. So some
9 had opioid abuse on their mind. It wasn't none.
10 But it was a very small number.

11 Q. And did you review each comment,
12 or did you use search terms to identify specific
13 comments?

14 A. We searched for a number of terms
15 in order to find it. There were over 1,000
16 respondents making comments, and often those
17 comments were full and long paragraphs. So it
18 was a lot to read through.

19 Q. So you didn't read every comment,
20 true?

21 A. I read many comments.

22 Q. I'm sorry.

23 A. Not every single comment.

24 Q. I'm going to ask you a specific

1 question, and I need a specific response.

2 If your lawyer at the end wants to
3 ask you some comments and drown it out, then she
4 will have plenty of time to do that, okay?

5 A. Okay.

6 Q. You didn't read every comment for
7 the 2020 and 2021 workplace surveys, true?

8 A. True.

9 Q. And the comments you read, those
10 were identified by using search terms; is that
11 right?

12 A. That's right.

13 Q. Okay. And are the search terms
14 that you used the search terms that you identify
15 in the report?

16 A. Yes.

17 Q. Did you use any other search terms
18 that are not included in the report?

19 A. No.

20 Let me correct that. We -- I did
21 search for "danger," and in assessing the
22 context for that, it was -- first of all, it was
23 a much larger number than any other search term
24 that I looked for, and I found it wasn't useful.

1 Q. You searched for "danger," and did
2 you review all the comments that triggered
3 danger, or did you just see that the results
4 were too broad and stopped?

5 A. I reviewed some of the comments,
6 not all of them.

7 Q. Roughly how many?

8 A. Sorry?

9 Q. Roughly how many?

10 A. A couple of dozen, three dozen,
11 four dozen.

12 Q. And it wasn't helpful because of
13 why?

14 A. Because it didn't lead me to find
15 anything that was on their mind that would have
16 related to the terms that were more related to
17 the complaint. There were discussions of
18 danger.

19 It was similar to what happened
20 when I researched for abuse, that there were
21 more pharmacists who mentioned abuse in the
22 context of they felt abused as an employee
23 rather than opioid abuse.

24 Q. If we turn to pages 8 and 9 of

1 your report, there's a bulleted list of the
2 search terms at the bottom of 8 and the top of
3 9.

4 Other than "danger," is this a
5 full list of the search terms that you used?

6 A. Yes.

7 Q. Who selected the terms to search
8 for?

9 A. I did.

10 Q. And how did you make this
11 selection?

12 A. From -- right above that on page 8
13 and a little bit at the bottom of page 7 are the
14 phrases and language that I pulled from the long
15 form complaint.

16 Q. So you pulled some phrases from
17 the complaint, and you used that as the basis to
18 craft search terms, and then you reviewed the
19 comments which were triggered by a search term;
20 is that right?

21 A. That's right.

22 Q. Okay. And then the comments
23 that -- the number of hits that -- well, let me
24 strike that.

1 Did you include the term "OARRS,"
2 O-A-R-R-S, as a search term?

3 A. I did not.

4 Q. Do you know what that is?

5 A. I couldn't tell you here today.

6 Q. Did you search for "controlled
7 substances"?

8 A. Yes. And I believe that's in the
9 bullet list on page 9.

10 Three respondents in the 2020
11 survey. Right.

12 Q. And did you just do these searches
13 from the 2020 survey, or did you also do
14 searches of the comments from the 2021 survey?

15 A. So the comments that are listed
16 next to the bullet point are from the 2021
17 survey. And then below are -- we replicated
18 that search from the previous survey.

19 Q. And when you did these searches,
20 did you -- so did you just search "controlled
21 substance," or did you search "control" with any
22 kind of asterisk or something that would
23 indicate control, controlled, controlling, all
24 of those variations?

1 A. I'm showing you the search terms
2 that I used.

3 Q. Okay. So there weren't any --
4 there wasn't any way that you searched the
5 comments with any kind of ability to determine
6 whether all the variations of a particular word
7 might be used? You used the search terms just
8 as they're written in the report, correct?

9 A. That's correct.

10 Q. Did the survey distinguish between
11 controlled substances and non-controlled
12 substances?

13 A. The survey did not address
14 controlled substances or uncontrolled
15 substances.

16 Q. So when the survey used the phrase
17 "safe and effective," did it exclude controlled
18 substances, in your mind?

19 A. In my mind, it did not exclude,
20 but it did not exclude many other topics related
21 to safety.

22 Q. Such as?

23 A. In terms of whether the work hours
24 and the scheduling and the opportunity to take

1 breaks, whether those were problematic. And
2 many other things related to the topic of the
3 survey, which was workplace issues.

4 Q. Do you believe that there's a
5 connection between a safe and effective
6 workplace and the dispensing of a controlled
7 substance?

8 A. I do not know.

9 Q. You do not know; is that right?

10 A. That's correct.

11 Q. And the reason for that is you're
12 not a pharmacist, correct?

13 A. That's correct.

14 Q. Okay. So when someone -- so when
15 a pharmacist responds that they don't feel that
16 they have a safe and effective workplace, you
17 don't know whether what they're referring to is
18 a safe opportunity to dispense controlled
19 substances, correct?

20 A. Again, the reason to do the search
21 was to have one way into what was in the mind of
22 the pharmacist. Very few made the connection
23 to -- the word "opioid" was included in very
24 few.

1 Q. Well, maybe they all did, and it's
2 just well-known among pharmacists that the real
3 concern with a safe and effective workplace is
4 the dispensing of controlled substances, and
5 certainly opioids in the height of the opioid
6 epidemic would be on every pharmacist's mind.
7 Is that possible?

8 MS. WOHL: Objection to form.

9 A. I don't believe the data support
10 that claim.

11 Q. And the reason that the data don't
12 support the claim is because the respondents who
13 offered comments didn't specifically use the
14 word "opioid" or "controlled substance" or
15 "controlled medication" more than a handful of
16 times; is that correct?

17 MS. WOHL: Objection to form.

18 A. That's correct, plus there were no
19 questions that specifically mentioned opioid in
20 order to see if there were a connection there.

21 Q. So is it your opinion that there's
22 no connection between this survey and the opioid
23 epidemic or the dispensing of opioids except in
24 the instances in which a few people responded

1 about opioids; is that true?

2 MS. WOHL: Objection to form.

3 A. I'm saying that any claim that
4 this survey represents, attitudes among
5 pharmacists toward opioid abuse or diversion is
6 not -- is not found in the data itself.

7 Q. And so in your opinion, that
8 connection does not exist, correct?

9 MS. WOHL: Objection to form.

10 A. My opinion is these data do not
11 support that claim. There may be other data
12 that would support that claim. It's not in this
13 corpus of data.

14 Q. In order to offer your opinions in
15 this case, did you make any effort to understand
16 the tasks and the responsibilities that a
17 pharmacist must perform?

18 A. No.

19 Q. And so you've never looked at all
20 the various tasks that a pharmacist must do
21 every day in their job; is that fair?

22 A. That was not my assignment. And,
23 no, I did not do that.

24 Q. Okay. Do you have any

1 understanding of the dangers of dispensing
2 controlled substances like opioids?

3 MS. WOHL: Objection to form.

4 A. I have no professional exposure to
5 that.

6 Q. Did you ask for any information
7 from Kroger or from counsel about the dangers of
8 opioids in the dispensing of controlled
9 substances?

10 A. No. That was not my assignment.

11 Q. Do you know what a Schedule II
12 controlled substance is?

13 A. Not specifically.

14 Q. Do you know what the requirements
15 are for a pharmacist in dispensing a controlled
16 substance?

17 A. I have no professional knowledge
18 of that.

19 Q. Do you know that a pharmacist --
20 do you know whether a pharmacist must determine
21 whether there's a legitimate medical purpose to
22 dispense a medication?

23 A. I have no professional knowledge
24 of that.

1 Q. Would you agree with me that there
2 are pressures on pharmacists to make sure that
3 when they're dispensing medications, they're
4 doing so safely?

5 A. I have no professional knowledge
6 of that.

7 Q. Okay. So you don't know -- you
8 don't know what the pressures are on pharmacists
9 at all in receiving a controlled substance
10 prescription and evaluating it and determining
11 whether to fill that prescription or not; is
12 that true?

13 MS. WOHL: Objection to form.

14 A. I have no professional knowledge
15 of that.

16 Q. Do you understand that a
17 pharmacist that dispenses a medication, such as
18 an opioid, that if done incorrectly, it could
19 lead to overdose and death?

20 MS. WOHL: Objection to form.

21 A. The questions you're asking are
22 outside my area of professional expertise. So,
23 no, I have no professional knowledge of that.

24 Q. And in order to form the basis of

1 your opinions in this case, you didn't review
2 any information about opioids and controlled
3 substances, true?

4 A. True.

5 Q. And you didn't look at the tasks
6 and the workload that a pharmacist has to
7 perform when dispensing controlled substances,
8 correct?

9 A. That is not my assignment.
10 Correct.

11 Q. And you didn't look at what due
12 diligence must be performed, what tasks must be
13 performed by a pharmacist before they determine
14 whether it's safe to dispense a medication,
15 correct?

16 A. Correct.

17 Q. What is the Ohio Board of
18 Pharmacy?

19 A. My understanding, it is the
20 licensing agency for pharmacists who wish to
21 work or are working in the State of Ohio.

22 Q. Do you know whether the Ohio State
23 of Board of Pharmacy is tasked with enforcing
24 laws that govern the legal distribution and

1 practice of pharmacy in the State of Ohio which
2 includes preventing diversion of drugs?

3 Are you aware of that?

4 MS. WOHL: Objection to form.

5 A. What I would know about the State
6 of Ohio Board of Pharmacy would have been in
7 Mr. McNamee's deposition. And because some of
8 that was not relevant to my assignment, while I
9 might have been exposed to what he said was
10 their purpose, that wasn't anything I needed in
11 order to do the assignment I was given.

12 Q. So you didn't think it was
13 relevant to your assignment to know what the
14 scope of the responsibilities are of the Ohio
15 Board of Pharmacy; is that fair?

16 A. That's fair.

17 Q. Okay. And would you agree with me
18 that pharmacists responding to the survey were
19 offering responses to their regulator?

20 Do you know that?

21 A. From some of the comments who --
22 they vary specifically, sometimes said, this
23 deserves -- you know, the Board should take a
24 look at this. So that's the only way that I

1 know.

2 Q. Okay. So you don't know that
3 pharmacists in Ohio are regulated by the Ohio
4 Board of Pharmacy; is that fair?

5 A. No. I believe I said that that is
6 the licensing agency.

7 Q. Okay. And so -- and not just the
8 licensing agency, but it's the regulator,
9 meaning that pharmacists, in responding to a
10 survey issued by the Ohio Board of Pharmacy, are
11 responding to the body that regulates them.

12 Do you agree with that?

13 MS. WOHL: Objection to form.

14 A. I have no reason to disagree with
15 it.

16 Q. Okay. But you don't know -- you
17 didn't consider whether the responses to the
18 survey were more or less reliable because the
19 pharmacist was responding to the person that
20 regulates their license; is that fair?

21 A. What comes to my mind would be the
22 response rate in terms of the proportion of
23 pharmacists who were invited to take part in
24 this survey who actually did, which was about

1 20 percent for the 2020 survey. It was slightly
2 higher the year before that.

3 So they apparently had no
4 authority to require the pharmacists to provide
5 input back to them. So I don't know if that's
6 helpful or not, but in terms of what is their
7 mindset and that this was the regulator that
8 they were talking to, I don't know that that's a
9 meaningful opinion that I would form or need to.

10 Q. And you didn't in your report,
11 correct?

12 A. That's correct.

13 Q. Okay. And I guess what I'm
14 asking -- and I'm not really sure if when you --
15 let me ask it this way: When you were analyzing
16 the -- and you spent about -- was it about two
17 weeks on the report; is that fair?

18 A. Roughly.

19 Q. So you spent from a couple days
20 after Thanksgiving to the first week of
21 December, the 8th of December, true?

22 A. True.

23 Q. Okay. So in that two-week period,
24 did you have in your mind, and did it factor

1 into any of your opinions, that the respondents
2 were responding to the regulator of the
3 practice?

4 Was that something that you
5 considered in forming your opinions here?

6 A. No.

7 Q. Okay. And, in fact, the only
8 reason that you knew that they were responding
9 to their regulator is because there were a
10 couple people in the comments that pointed out,
11 "Hey, you know, the Ohio Board of Pharmacy
12 should take more action here."

13 True?

14 A. It might not be the only way.
15 Again, the deposition of Mr. McNamee may have
16 included information about this being a
17 regulatory agency, but it wasn't meaningful to
18 my -- to forming my opinions about the survey.

19 Q. Okay. So the question of whether
20 they were responding to the regulator or not was
21 not something that you offer an opinion about
22 one way or the other?

23 A. That's right.

24 Q. And it wasn't something you

1 considered in forming the basis of your opinions
2 here?

3 A. That's right.

4 Q. Do you have any reason to believe
5 that there was any fraud conducted with respect
6 to the survey?

7 A. From what I reviewed, I had no
8 thought that this -- the survey results that I
9 was reviewing were the product of fraud. I had
10 no way -- I had no way to know.

11 Q. Well, there was some testimony
12 from the Ohio Board of Pharmacy, a 30(b)(6)
13 deposition. They claim that there was no fraud,
14 and you're not aware of any evidence of fraud?

15 A. Right. I believe Mr. McNamee
16 testified that this was complete and accurate,
17 and that's what I would know.

18 Q. And do you have any reason to
19 dispute that?

20 A. I have no knowledge of any fraud.

21 Q. And you're not going to offer any
22 kind of opinions that the survey was conducted
23 fraudulently?

24 A. I have -- I offer my opinion on

1 some methodological concerns that would sort of
2 inform whether this survey is representative of
3 the full complement of licensed pharmacists
4 working in Ohio, but I -- those are not opinions
5 that I offered that those methodological
6 problems were the outcome of fraud.

7 Q. Okay. I feel you're combating me
8 a little bit on the issue, and I -- what I'm
9 trying to understand is where your challenges
10 are and where they aren't.

11 So are you willing to agree with
12 me that you haven't seen evidence of fraud,
13 you're not going to offer any evidence that
14 there was fraud, and that's not the basis of
15 your criticisms, correct?

16 A. That's correct. Thank you. Thank
17 you.

18 Q. And you're not going to suggest
19 that somebody manipulated the data at the Ohio
20 Board of Pharmacy.

21 There's no evidence of that, true?

22 A. No evidence that I saw.

23 Q. Okay. And is it -- do you believe
24 that the Ohio Board of Pharmacy was honestly

1 trying to understand how pharmacists felt about
2 the workplace and the conditions in which they
3 worked?

4 A. That is their stated intent. Yes.

5 Q. Do you have any reason to dispute
6 it?

7 A. I don't have any reason to dispute
8 it.

9 Q. Do you think the Board would do
10 that, would try to manipulate the results of the
11 survey in any kind of way?

12 MS. WOHL: Object to the form.

13 A. I do not know the members of the
14 Board individually.

15 Q. Okay. So it's possible, in your
16 mind, that you think the Ohio Board of Pharmacy
17 could have manipulated the data?

18 MS. WOHL: Objection to form.

19 A. That's not -- I'm not -- I'm
20 saying I don't know. It's not in the data as I
21 saw it. There wasn't -- no red flags came up
22 for me that says, "Oh, we've got some fraud
23 going on here."

24 Q. Okay. And there was no red flag

1 that you saw with respect to manipulation of the
2 data or changed answers to any of the questions?

3 A. I saw no evidence of that.

4 Q. In fact, the survey was issued,
5 according to the Board, to comply with Ohio
6 rules and laws, true?

7 A. I believe that's true.

8 Q. You put it in your report, right?
9 If you look at page 4 of your report, you list
10 them, true?

11 A. True.

12 MR. ELSNER: If we could pull up
13 MR 4370.006. This is Exhibit 3.

14 BY MR. ELSNER:

15 Q. And if you look there, just above
16 "Content of the survey questions," there are
17 various regulations that are cited under
18 "Purpose."

19 Do you see that?

20 A. Yes.

21 Q. Okay. And one of the purposes or
22 one of the regulations require that there are
23 adequate safeguards under 4729.55. "Adequate
24 safeguards are assured that the applicant will

1 carry on the business of a terminal distributor
2 of dangerous drugs in a manner that allows
3 pharmacists and pharmacy interns employed by the
4 terminal distributor to practice pharmacy in a
5 safe and effective manner."

6 Do you see that?

7 A. I do.

8 Q. And you understand that one of the
9 purposes of the survey was to determine whether
10 pharmacists felt that they had an employment
11 place that was safe and effective to dispense
12 medications?

13 A. There were questions specifically
14 about that. Yes.

15 Q. Yes. And many of the questions
16 actually adopt that exact language, a safe and
17 effective manner, true?

18 A. True.

19 Q. And it comes right from the
20 regulation, right?

21 A. That part. Yes.

22 Q. And if we look at 4729:5-5-02 just
23 beneath it, "The pharmacy shall be appropriately
24 staffed to operate in a safe and effective

1 manner."

2 Correct?

3 A. Yes.

4 Q. And that's the same type of
5 language that it was before it was adopted in
6 many of the questions offered in this survey,
7 true?

8 A. True.

9 Q. And you're aware from documents
10 from the Board of Pharmacy and the testimony of
11 Mr. McNamee, that the Board had received
12 complaints from pharmacists in Ohio regarding
13 their workplace conditions?

14 Were you aware of that?

15 A. It was not top of my -- not top of
16 my memory from Mr. McNamee's deposition. I was
17 looking specifically for information regarding
18 how the survey was conducted and what the
19 content of the survey was.

20 Q. Did you try to analyze why the
21 Board conducted the survey?

22 A. That was not my assignment.

23 Q. Did you think it was important to
24 know why the Board conducted the survey?

1 A. The report from the 2020 survey
2 explained what it was, was their purpose.

3 Q. When you say "the report from the
4 2020 survey," you mean the overarching report?

5 A. When they were delivering the
6 data. And it's there on this page slightly
7 higher. At the very top of the page. "The
8 purpose of the advisory committee is to promote
9 patient safety," and committee recommendations
10 that are there.

11 The intent of the survey above
12 that was to capture vital information on
13 pharmacists' working conditions in the state.

14 MR. ELSNER: Why don't we pull out
15 and mark as the next exhibit MR 4202,
16 which is Exhibit 4.

17 - - -

18 (Selzer Deposition Exhibit 4 marked.)

19 - - -

20 BY MR. ELSNER:

21 Q. Is this the document that you're
22 referring to?

23 A. Yes.

24 Q. And it lists the statutory -- or

1 the regulations that we just described at the
2 top; is that right?

3 A. That's right.

4 Q. Okay. And it describes the intent
5 of the survey under the Issue section at the end
6 of the first paragraph was to capture feedback
7 on pharmacists' working conditions in the state;
8 is that true?

9 A. That's true.

10 Q. The end of the first paragraph
11 under "Issue."

12 Is that right?

13 A. That's right.

14 Q. Okay. And you see under that, the
15 "capturing this data is important as
16 pharmacists' working conditions have been
17 identified as a concern among licensees, state
18 regulators (several of which have issued similar
19 surveys), and national organizations."

20 Do you see that?

21 A. I do.

22 Q. Okay. And so you see here that
23 concern among licensees, meaning pharmacists and
24 pharmacies, have expressed concern about working

1 conditions.

2 Do you agree with that?

3 A. That's what this says.

4 Q. You don't have any reason to
5 dispute that; is that right?

6 A. I have no reason to dispute that.

7 Q. And are you aware that other
8 regulators, other Boards of Pharmacy across the
9 United States, have issued similar surveys which
10 have identified similar working condition
11 concerns in pharmacies in their states?

12 A. That's what this says. And I have
13 no reason to dispute it.

14 Q. Did you review any of those other
15 surveys?

16 A. I attempted to find this 2019
17 survey, and -- or there was one in one state,
18 and either couldn't find an adequate summary of
19 it or it was not as formal as the survey from
20 the State of Ohio.

21 Q. Okay. So you didn't review the
22 survey conducted by the Missouri Board of
23 Pharmacy; is that right?

24 A. I believe that's the state

1 I attempted to find, and I did not find it
2 useful to my analysis.

3 Q. And what you looked at was what?

4 A summary of that survey?

5 A. To even find what questions were
6 asked. It wasn't -- they said they had relied
7 on it, and I couldn't see anything that was
8 helpful.

9 Q. So when you reviewed Mr. McNamee's
10 deposition from the Ohio Board of Pharmacy, did
11 you review the exhibits to the deposition?

12 A. I did not.

13 Q. Were you provided --

14 A. Beyond the survey reports that I
15 was taking a look at.

16 Q. Okay. So you didn't -- were you
17 provided the exhibits to the deposition, or just
18 the deposition transcript?

19 A. My memory is just the transcript.

20 Q. Okay. And whether you were
21 provided them or not, you didn't review the
22 exhibits to Mr. McNamee's deposition other than
23 the Ohio Board of Pharmacy survey results; is
24 that right?

1 A. That's correct.

2 Q. Okay. So -- all right. So you
3 haven't looked at Board of survey results from
4 any other state. You saw some document about
5 something about the Missouri Board of Survey but
6 not the actual survey results.

7 Did you look at any survey results
8 conducted by any other national associations of
9 pharmacists or any other national groups?

10 A. No.

11 Q. Okay. So you've never compared
12 the results of the Ohio Board of Pharmacy survey
13 to any other surveys conducted by any other
14 states or by any other national organizations;
15 is that fair?

16 A. That's fair.

17 Q. Okay. Now, there were also --
18 there were also national articles which
19 discussed the sentiments of pharmacists working
20 in pharmacies around the country and whether
21 they felt that they had adequate time to perform
22 their jobs and whether the metrics that were
23 imposed on them or provided by their employer
24 impacted patient care.

1 Have you reviewed any of those
2 articles?

3 A. No.

4 MS. WOHL: Objection to form.

5 Q. Okay. So one of those articles
6 was from the Chicago Tribune. You did not
7 review that article; is that true?

8 MS. WOHL: Objection to form.

9 A. I may have -- I didn't -- I did
10 not use that article in writing this report. It
11 wasn't germane.

12 Q. And did you review it?

13 A. I don't remember, but maybe. It
14 rings a little faint bell.

15 Q. What about the New York Times
16 article? Did you review the New York Times
17 article on workplace safety issues and
18 understaffing?

19 A. I would have the same answer to
20 it. It may be that I browsed it, but it was
21 not -- it did not form -- it didn't provide a
22 basis for forming the opinion on this survey.

23 Q. Okay. And it's not included as a
24 list of any of the sources or references that

1 you relied upon, true?

2 A. That's right. Correct.

3 Q. Were you aware that those national
4 articles formed the basis for the Ohio Board of
5 Pharmacy deciding to issue a pharmacist workload
6 survey?

7 A. I have no reason to think they did
8 or they did not.

9 Q. You're just unaware one way or the
10 other, correct?

11 A. Correct.

12 Q. And you didn't review them for
13 that purpose, if you looked at them at all,
14 true?

15 A. They were -- reviewing them would
16 have been outside of what I was assigned to do.

17 Q. Do you have any reason to dispute
18 the reasonableness of the Ohio Board of
19 Pharmacy's decision to issue a workplace survey?

20 A. I'm sorry. Can you --

21 Q. Was it reasonable, in your
22 opinion, for the Ohio Board of Pharmacy to issue
23 a workplace survey to pharmacists?

24 A. Yes.

1 Q. Was it appropriate?

2 A. They thought it was appropriate.

3 Q. Do you have any reason to believe
4 that it's not appropriate?

5 A. I do not.

6 Q. Do you have any reason to believe
7 that the Ohio Board of Pharmacy was not seeking
8 truthful answers to the survey that they
9 submitted?

10 A. I have no reason to believe they
11 were not wanting truthful answers.

12 Q. Do you believe that the Ohio Board
13 of Pharmacy was crafting questions to obtain
14 unfair results?

15 A. Can you be more specific of what
16 you mean by "unfair results"?

17 Q. Where they tried to obtain a
18 desired outcome. Were the questions biased?
19 Were they unfair to the person answering the
20 questions?

21 A. I'd like to refer to some of those
22 questions, if I may. So that's on page 4, and
23 it goes through page 7.

24 My opinion was that these would

1 not be examples of leading questions that would
2 be designed to create opinions rather than to
3 capture opinions.

4 Q. And I thought that was your view,
5 because I didn't see with respect to the
6 criticisms that you offer of the survey any
7 particular criticism with the questions that
8 were asked, true?

9 A. That's right.

10 Q. And so that's one of the things
11 you did look at, though, was to determine are
12 these questions biased or fair or suggestive of
13 a particular answer?

14 A. That's right.

15 Q. And that wasn't a criticism that
16 you had of the survey?

17 A. That's correct.

18 Q. Okay. Now, in response to the
19 survey -- and we saw this on the top of the
20 document we were just looking at -- the Ohio
21 Board of Pharmacy established the Pharmacist
22 Workload Advisory Committee.

23 Do you see that?

24 A. I do.

1 Q. Okay. And do you know what that
2 committee is?

3 A. I only know of it through the
4 testimony of Mr. Davis.

5 Q. And you've never looked at the
6 notes or agendas or any of the other information
7 about what the workload advisory committee has
8 done for the Board of Pharmacy; is that true?

9 A. That's correct, I have not.

10 Q. Have you examined any of the steps
11 that the Board of Pharmacy has taken in Ohio in
12 response to the survey results they received?

13 A. No.

14 Q. The Ohio Board of Pharmacy has
15 taken certain steps and made certain
16 regulatory -- they've had certain regulatory
17 discussions about steps that could be taken.
18 And they did so on the basis of the results of
19 the survey that they received, both the 2020 and
20 2021 survey.

21 Is that appropriate, in your mind,
22 for the Board of Pharmacy to have done that?

23 MS. WOHL: Objection to form.

24 A. You're asking me if it's

1 appropriate that once they had conducted a
2 survey and gotten data, to take action on the
3 basis of what they feel they learned from the
4 survey?

5 Q. Yes.

6 A. Yes. It's common.

7 Q. And in this case, was it
8 appropriate?

9 MS. WOHL: Objection to form.

10 A. It would depend on what the steps
11 were. So I don't have a broad -- I can't speak
12 to the appropriateness of the steps they took.

13 Q. Well, you're aware that the Ohio
14 Board of Pharmacy conducted two surveys, right?

15 A. That's right.

16 Q. And so based on the results of the
17 first survey, they decided that there was enough
18 concern to conduct a second survey.

19 Do you believe that that was
20 appropriate?

21 MS. WOHL: Objection to form.

22 A. It's their prerogative. So it's
23 not inappropriate. That's how I would look at
24 it.

1 Q. Do you believe that the results of
2 the first survey in 2020 were so unreliable that
3 it wouldn't have been appropriate for the Board
4 to issue a second survey in 2021?

5 A. I don't know what the reasoning
6 was in order to do the second survey. What I
7 note is that there were a couple of questions
8 that were asked in the second survey that were
9 not part of the first, so that got a little bit
10 more depth in terms of attitudes toward their
11 satisfaction with their primary place of
12 employment.

13 This is on page 6 of my report.
14 Question 12 deals with that.

15 And question 13 was about the
16 level of stress. So there -- they were -- my
17 opinion would be they were looking for greater
18 depth that would help explain the answers they
19 got to the first survey.

20 Q. And while there were new questions
21 asked, largely many of the questions were repeat
22 questions, true?

23 A. Yes.

24 Q. And so at least the members of the

1 board didn't feel that the questions that were
2 asked or the results that they received were so
3 unreliable that they wouldn't ask the same kind
4 of questions again, true?

5 MS. WOHL: Objection to form.

6 A. The reason to do a second survey
7 could -- I don't know if they were thinking that
8 these results were not reliable, but they may
9 have been looking for change over time. That's
10 another reason that clients sometimes do repeat
11 surveys.

12 Q. And in this case, the results
13 confirmed the results of the first survey
14 largely, true?

15 MS. WOHL: Objection to form.

16 A. Well, I'm going to look at my
17 appendix that we've created the tables and
18 PowerPoint to compare those two. In some cases,
19 they changed the wording slightly and so there
20 wasn't an ability to do a direct comparison.

21 There were some differences over
22 time, but was there a flip-flop in terms of --
23 it was more the strength of the opinions that
24 were offered rather than the direction, if I can

1 put it that way.

2 Q. All right. So just by way of
3 example -- and you're in the appendix. If we
4 turn to, for instance, X-19, which is
5 MR 4371_19. This is just one example.

6 So the way that you've done this
7 is that you've indicated what the response was
8 in 2020 and what the response was in 2021,
9 correct?

10 A. You might go to the page just
11 before that, which is representative of all
12 respondents, right?

13 Q. I prefer -- your lawyer might
14 prefer I talk about every one, but I want to
15 start with talking about the grocery store large
16 chain responses.

17 And in this case, the response
18 difference from 2020 to 2021 was that there were
19 actually more people that strongly disagreed or
20 disagreed with an environment has sufficient
21 pharmacist staffing to allow for safe patient
22 care, correct?

23 A. Correct.

24 Q. But if we go to the page before,

1 as you had requested, page 18, and we're looking
2 among all respondents, we also saw that number
3 increased from 2020 to 2021. So the results
4 actually not only confirmed it but showed things
5 were getting worse, true?

6 MS. WOHL: Objection to form.

7 A. I would agree that there's more
8 intensity there. There's also fewer who agree
9 with that.

10 Q. Yes.

11 MS. WOHL: I'm ready for a break
12 when you've got a stopping point.

13 MR. ELSNER: Yeah. Let me just do
14 a couple more of these just to finish
15 this one out, if we could.

16 Actually, we can cover some of
17 those at a later time. Why don't we
18 take a break. That's fine.

19 THE VIDEOGRAPHER: Going off the
20 record at 11:10 a.m.

21 (Recess taken.)

22 THE VIDEOGRAPHER: We are back on
23 the record at 11:19 a.m.

24

1 BY MR. ELSNER:

2 Q. Dr. Selzer, do you believe that
3 the results of the second survey, which in many
4 cases showed either a consistent or kind of
5 increasing concern among pharmacists, added to
6 the reliability of the responses to the first
7 survey in any way?

8 A. The definition of "reliability" is
9 doing the same survey the same way and getting
10 similar responses. And to the extent that there
11 are similar responses, that's evidence that this
12 is reliable getting the same thing.

13 In some cases, there's a change
14 over time between the two, and the unanswered
15 question is what is accounting for the
16 difference there.

17 Q. Do you mean a difference in the
18 response to the question, that it showed some
19 inconsistency or unreliability with respect to
20 the responses of the first survey?

21 A. It shows, in some cases, a change.
22 And so the question -- as a methodologist, I'm
23 going to say, "Well, what were the differences
24 between the two surveys, or what do we know

1 about the response rate?"

2 And I do discuss that in the
3 report, that there was a difference in response
4 rate, that the first survey had a higher
5 response rate of, I believe, 26 percent, and the
6 second survey was 20 percent, that there had
7 been a change in terms of the number of
8 invitations that were sent so that they -- it
9 went -- the second survey went to about 1,000
10 fewer pharmacists. And there's no explanation
11 about why there would have been fewer
12 invitations sent. So one could speculate this
13 way or that about that.

14 And there was a difference -- and
15 I'm looking at page 14 of my report -- that the
16 makeup of the respondent pool was different in a
17 couple of areas there, that there were fewer
18 respondents who classified their work setting as
19 a hospital.

20 And they changed from -- in the
21 earlier survey, they'd had inpatient and
22 outpatient separated out, which I added the two
23 together. There are fewer of those pharmacists
24 responding and more responding from large chain

1 grocery big box stores.

2 So whether the difference that we
3 see in how questions were answered was a result
4 in change over time or a change in the
5 respondent pool, we don't know.

6 Q. So the focus of your answer has
7 been on who received the survey and who
8 responded to the survey. But my question is
9 on -- is the actual responses to the survey.

10 Do the responses of the second
11 survey -- are they -- do they largely confirm
12 the results of the responses to the first
13 survey?

14 MS. WOHL: Objection to form.

15 A. Let me take a look here.

16 As I said, there were some cases
17 where there were -- we didn't get identical
18 responses. So that raises the question of,
19 well, why are -- why are we not getting
20 identical responses if we ask the same questions
21 to the same respondent population.

22 So in some cases --

23 Q. Do you really mean identical?

24 I mean, I wouldn't imagine you could ever get an

1 identical response.

2 A. Within the margin of error, we
3 would -- it's not uncommon. We do surveys all
4 the time and sort of look at what happens with
5 the demographics, and there -- some of these
6 differences are beyond what we would expect to
7 see unless there's --

8 Q. Can you give me an example.

9 A. -- unless there's meaningful
10 change that's happening there.

11 Q. Can you give me an example.

12 A. An example of?

13 Q. You said there's a question where
14 there's a meaningful difference in the response,
15 and I'm asking which questions.

16 A. So I'm looking at page X-28 in the
17 appendix.

18 Q. Okay.

19 A. And I would say here is an example
20 of no meaningful change between the first time
21 that this was -- the first time data were
22 gathered and the second time data were gathered.

23 Q. Okay. So with respect to this
24 question on 28, the question is, "I feel

1 pressure by my employer or supervisor to meet
2 standards or metrics that may interfere with
3 safe patient care."

4 And this is the respondents among
5 large chain grocer/big box respondents.

6 And 42 respondents in 2020 said
7 they strongly -- 42 percent in 2020 said they
8 strongly agreed that they feel this pressure,
9 40 percent in 2021.

10 You consider that a consistent
11 response, correct?

12 A. I do. I do.

13 Q. And then 31 percent agree with it,
14 not strongly, but agree with it in 2020, and
15 33 percent in 2021.

16 So in 2020, 73 percent of those
17 that worked in large chain big box grocery
18 stores felt that their employers were pressuring
19 them to meet standards or metrics that might
20 interfere with safe patient care, true?

21 A. That's correct.

22 Q. Okay. And then that response in
23 2021 was 73 percent felt that way among those
24 respondents from that category or group,

1 correct?

2 A. That's correct.

3 Q. All right. So that's a consistent
4 response, true?

5 A. That's right.

6 Q. What's an inconsistent response or
7 an anomaly?

8 A. So I'm looking, just to stay in
9 that same neighborhood, X-30. And what you see
10 on the disagree side there is a shift both that
11 there are more disagreeing and that there's a
12 greater intensity in terms of the disagreement
13 that's there.

14 Q. And it's not showing the opposite
15 results, right? It's not showing --

16 A. That's right.

17 Q. -- in the past in 2020, most
18 people agreed that the workload ratio was fine,
19 and now there's a problem, correct?

20 A. That's right.

21 Q. People just feel more strongly
22 about the workload ratio in 2021 who are
23 responding than in 2020, true?

24 A. That's -- I agree with that.

1 Q. Okay. And you think that's an
2 anomaly in the data, that that makes the data
3 unreasonable?

4 A. No, I don't. The question is did
5 the second survey confirm the first survey.
6 And, again, I'm going to have a technical
7 understanding and definition of what we mean by
8 "confirm," that the findings are -- that in
9 terms of -- remember, the frame you've given me
10 is reliability, and that means you get the same
11 response.

12 Q. Okay. But you don't disagree that
13 the results of the survey, whether in 2020 or
14 2021, that most respondents felt that the staff
15 ratio did not provide pharmacists to provide
16 safe and effective care for patients, correct?

17 A. That's correct. I'm just looking
18 up whether --

19 Q. And that intensified between 2020
20 and 2021. It got worse, according to the
21 respondents?

22 (Court reporter clarification.)

23 Q. And in 2021 the responses to that
24 particular question, the feelings about

1 pharmacists about that staffing ratio, grew
2 worse, true?

3 A. There was more disagreement with
4 the statement, that's correct.

5 Q. Okay. Any other anomalies you
6 want to point me to or changes that would
7 indicate that the survey results were unreliable
8 between the first and second survey --

9 A. No.

10 Q. -- to the responses?

11 A. No.

12 Q. So I didn't really see any.
13 Are there any?

14 And you don't highlight that in
15 your report as a concern, true?

16 A. That's correct.

17 Q. You do write in the report on
18 page 4 -- and it's page 4, 6. In the first full
19 paragraph, "The State of Ohio Board of Pharmacy
20 2021 survey is a valid attempt to understand
21 workplace issues among licensed pharmacists
22 working in Ohio."

23 What do you mean by it's "a valid
24 attempt to understand workplace issues among

1 licensed physicians working in Ohio"?

2 A. Licensed pharmacists.

3 Q. Licensed pharmacists. Yeah.

4 A. It means that what they set out to
5 do was to understand workplace issues. They
6 created questions, they designed questions that
7 were designed to get to workplace issues, and
8 it's a reasonable attempt at it.

9 Q. Okay. And it's reasonable enough
10 that the Board would take some action with
11 respect to the responses, correct?

12 MS. WOHL: Objection to form.

13 A. I have no knowledge if they did or
14 did not take action, so --

15 Q. Okay. What made this -- what
16 made -- what, in your opinion, makes it a valid
17 attempt to do this? What makes it valid?

18 A. That what they said they were
19 going to do was to ask questions about workplace
20 issues, and that's what they constructed.

21 Q. So they wanted to get to the heart
22 about how pharmacists feel about their working
23 conditions; is that true?

24 A. That's right.

1 Q. And the questions that they asked
2 were fair to understand that; is that right?

3 A. Reasonably fair.

4 Q. Okay. And there's -- and the
5 responses that they received and the questions
6 that they asked were fair questions to get to
7 the heart of that question, correct?

8 A. Reasonably fair. Yes.

9 Q. And the responses that they got
10 were reasonable for them to take action with
11 respect to it? It would be -- you don't know
12 what action they took, but if they took action,
13 you wouldn't think that that would be
14 unreasonable to do based on what you've seen of
15 the survey; is that fair?

16 A. That's fair, with the caveat that
17 I had some methodological concerns.

18 Q. Right. And that's what I'm really
19 trying to get at.

20 Are those methodical concerns so
21 significant that you think that the entire
22 survey results are totally unreliable and
23 shouldn't have been reviewed, analyzed, or
24 considered at all by the Board?

1 MS. WOHL: Objection to form.

2 Q. Can you say your answer again.

3 A. No.

4 Q. In fact, you're aware that Kroger
5 had one of its employees sit on the pharmacist
6 workload committee who considered the results of
7 the survey and whether to conduct a second
8 survey, correct?

9 A. Is that Mr. Davis?

10 Q. Right.

11 A. I'm loosely aware of that.

12 Q. Well, you read his deposition,
13 right?

14 A. I did.

15 Q. And you're aware that he sits on
16 the workplace advisory committee?

17 A. I am.

18 Q. Are you aware of any objections
19 that he framed with respect to the survey?

20 A. What I recall is that he was --
21 his response to the survey results was to wish
22 for additional information before deciding if
23 there was a concern that warranted future steps.

24 Q. And as a result, they took a

1 second survey, correct?

2 MS. WOHL: Objection to form.

3 A. They took a second survey.

4 Q. And are you aware of Kroger
5 objecting, other than through your testimony in
6 this litigation, to the results of the -- to the
7 Ohio pharmacy workload survey?

8 A. I have no knowledge of that.

9 Q. Okay. You're not knowledgeable of
10 any objections Mr. Davis had to the survey
11 results other than he wanted more data, correct?

12 A. I am not -- that's correct.

13 Q. And are you aware that the
14 governor of the State of Ohio was informed about
15 the results of the survey?

16 A. I don't know that I'm aware.

17 Q. Are you aware that the governor of
18 the State of Ohio did not offer any objection to
19 the survey or the way the survey was used?

20 A. I do not know.

21 Q. The pharmacist workload committee
22 drafted policy options with feedback and various
23 regulatory proposals.

24 Have you reviewed those?

1 A. I have not.

2 Q. Do you know that the pharmacist
3 workload committee based its regulatory
4 proposals on the responses to the survey from
5 pharmacists who responded to the 2020 and 2021
6 survey?

7 A. I'm not aware of that.

8 Q. Is it appropriate, in your mind,
9 for the Ohio Board of Pharmacy to have done
10 that?

11 MS. WOHL: Objection to form.

12 A. I would -- I would prefer to use
13 the word "reasonable" for them to do it.

14 Q. Why do you prefer to use the word
15 "reasonable"?

16 A. Well, appropriate implies that
17 there's some external measure of what would and
18 would not be appropriate. Reasonable, does it
19 make sense that they did it.

20 Q. So you think it makes sense --

21 A. It makes sense they did it.

22 Sorry?

23 Q. You think it makes sense that they
24 used these results to craft some regulatory

1 proposals; is that fair?

2 A. Yes.

3 Q. Would you have done it if you sat
4 on the Board?

5 MS. WOHL: Objection to form.

6 A. I don't know.

7 Q. You don't know?

8 A. I don't know.

9 Q. Are they so unreasonable that you
10 don't think that they should be used at all in
11 terms of helping out with best practices in
12 Ohio?

13 MS. WOHL: Objection to form.

14 A. I have given that question no
15 thought before right now.

16 Q. So in all this work you did and
17 the work that you've done in preparing for the
18 deposition, it never occurred to you whether you
19 thought the results -- just 50,000-foot view --
20 the results of this are so unreliable that no
21 one should have ever used this as a basis to
22 take any further action?

23 MS. WOHL: Objection.

24 Q. Do you have an opinion one way or

1 the other on that?

2 MS. WOHL: Objection to form.

3 A. It is not my opinion, and I
4 believe I state it, that it was a reasonable
5 thing for them to take action.

6 Q. Was it reasonable for them to send
7 a request to all pharmacists in Ohio to respond
8 to the survey? Was that a reasonable way to go
9 about eliciting responses?

10 A. That method is called a census.
11 So rather than draw a sample, they chose to
12 attempt to contact every pharmacist who is
13 licensed and working in Ohio to participate in
14 the survey.

15 Q. Was it reasonable to do this as a
16 census as opposed to a survey?

17 MS. WOHL: Objection.

18 A. As opposed to a sample, I think
19 you mean.

20 Yes, because it's a relatively
21 small meaningful universe to them, meaning it's
22 not 100,000. It's not a million. And I believe
23 it also showed the wish to gather as much data
24 as possible.

1 Q. And that's a potential advantage
2 of a census type survey as opposed to a sample,
3 correct?

4 A. Well, the advantage is the -- sort
5 of the rhetorical ability to say we've reached
6 out to every pharmacist. The difficulty is in
7 the response rate, which is what you want is to
8 represent every pharmacist.

9 And when you have a response rate
10 of 20 percent, then it raises a question of
11 whether your findings actually do generalize
12 beyond the people who answered to represent the
13 full complement of pharmacists licensed in the
14 State of Ohio.

15 Q. And we're going to get to the --
16 we're going to get to that point on methodology
17 in a few minutes. I want to ask a couple more
18 questions just on relevance before we get there.

19 Do you know whether the greatest
20 danger in a pharmacy is dispensing controlled
21 substances?

22 A. I do not know.

23 Q. Do you know that when a pharmacist
24 is expressing concerns about safe patient care,

1 whether that includes the dispensing of
2 controlled substances or not?

3 A. I would assume it includes any
4 number of factors. And one could be related to
5 dispensing controlled substances, but not
6 exclusively.

7 Q. So you believe it could be
8 expressing that concern, but you're not sure; is
9 that true?

10 A. We have no way to quantify what
11 proportion were thinking about that when they
12 answered the questions.

13 Q. Do you know what policy Kroger
14 applies with respect to the dispensing of
15 controlled substances?

16 A. I do not.

17 Q. I want to ask a few questions
18 about metrics. We looked at one of those
19 questions a few minutes ago in the survey
20 results.

21 What is or what are pharmacy
22 metrics?

23 A. I'm sorry?

24 Q. What are pharmacy metrics?

1 A. I don't know what you're
2 referencing.

3 Q. Okay. So if we look at question 6
4 in your report, 4370.007 on page 5, question 6
5 asks the pharmacist, "I feel pressure by my
6 employer or supervisor to meet" -- sorry.
7 Question 6. "I feel pressure by my employer or
8 supervisor to meet standards or metrics that may
9 interfere with safe patient care."

10 My question is, what are pharmacy
11 metrics?

12 A. My only knowledge of what they
13 might be referring to would have come from
14 comments that some of the pharmacists offered.
15 I have no independent knowledge of what pharmacy
16 metrics are.

17 Q. Do you know what types of metrics
18 pharmacists are measured by at Kroger and other
19 pharmacies?

20 A. What I know is what was mentioned
21 by some pharmacists in their comments.

22 Q. Is that the only basis of your
23 knowledge?

24 A. That is the only basis of my

1 knowledge.

2 Q. Prior to doing your work in this
3 case, have you ever heard of pharmacy metrics
4 before?

5 A. Those two words, I do not believe
6 I've ever heard put together.

7 Q. Okay. Do you agree one way or the
8 other whether compensation policies based on
9 prescription volume could influence the
10 dispensing of medications?

11 MS. WOHL: Objection to form.

12 A. I have no professional knowledge
13 of that.

14 Q. So in this question when they ask,
15 "I feel pressure by my employer or supervisor to
16 meet metrics or standards that may interfere
17 with safe patient care," other than what you
18 read in the comments which triggered on your
19 search terms, you don't know what any of those
20 standards or metrics are, correct?

21 A. I do not have a complete list of
22 what standards or metrics they might be
23 referencing there. I am aware that there were
24 some pharmacists that chose to comment on

1 metrics.

2 Q. Yeah, let's look at one. Let's
3 pull up MR 4202 from the 2020 survey on
4 page 109. It's Exhibit 4. If you could go to
5 4202_000109. It's the very last comment.

6 Are you with me?

7 A. I am.

8 Q. Okay. And I'm just going to blow
9 this up a little bit.

10 And it reads, does it not,
11 "Metrics are the worst part of retail pharmacy
12 because they supersede anything of actual
13 importance, including safety. Kroger pharmacy
14 publicly states that the most important thing is
15 patient safety, but where are the metrics
16 measuring it?"

17 Are you aware that -- did you read
18 this comment?

19 A. Yeah, I did. It had the word
20 "Kroger" in it. That was one of our search
21 terms.

22 Q. Okay. So you were aware that the
23 metrics that Kroger was using didn't include any
24 metrics which measure patient safety, correct?

1 MS. WOHL: Objection to form.

2 A. I am aware that one person, one
3 pharmacist, typed that answer. I'm not aware of
4 whether that exists in the real world or not.

5 Q. Well, you're also aware of how
6 many people responded to that question about
7 metrics. And we just looked at the fact that it
8 was over 70 percent working in large chain and
9 grocery store settings, correct?

10 A. Correct.

11 Q. So this comment confirms the
12 result of the statistics that we looked at in
13 some way that, in fact, pharmacists feel that
14 metrics are interfering with patient safety,
15 true?

16 MS. WOHL: Objection to form.

17 A. Let me just go back to that
18 particular chart, if you don't mind.

19 Can you advise me of what page in
20 my appendix?

21 Q. I think you referred to it -- to
22 this earlier. It's MR 4371, page 28.

23 We can jump there if it's helpful.
24 It's on the screen.

1 Do you see it?

2 A. Uh-huh.

3 Q. So when asked this question,
4 "I feel pressure by my employer or supervisor to
5 meet standards or metrics that may interfere
6 with safe patient care," in 2020, 74 percent of
7 the respondents either strongly agreed or agreed
8 with that statement, true?

9 A. That's true.

10 Q. So it wasn't one pharmacist in the
11 whole State of Ohio that felt that way? At
12 least with respect to people who worked in large
13 chain grocery stores and large chain pharmacies,
14 in fact, 73 percent of those that responded felt
15 that way, correct?

16 MS. WOHL: Objection to form.

17 A. The difficulty I'm having
18 answering your question is you're trying to tie
19 one person's comment back to these data. And I
20 would say the comment may be an example of a
21 finding from these data, but we did not have a
22 way of knowing the way that commenting
23 pharmacist answered this question.

24 So I'm reluctant to say that

1 this -- that that's confirmatory.

2 Q. Do you agree that when someone
3 provides a written comment to a survey, that it
4 reinforces or it makes more reliable the result
5 of the statistics in the survey as a general
6 matter?

7 A. The commenting on the survey has
8 nothing to do with the technical definition of
9 reliability.

10 Q. Does it -- the fact of the number
11 of people who issue comments reflect on how
12 strongly people felt about these issues?

13 A. It is a minority of the
14 pharmacists who completed the survey who
15 commented. So you've got -- you've got a
16 response bias there in terms of who does and who
17 does not comment. So trying to generalize from
18 comments is not appropriate.

19 Q. So in your mind, the fact that a
20 pharmacist took the time to write this
21 particular comment about the metrics doesn't
22 make the fact that 73 percent of the pharmacists
23 who responded to the survey in this setting,
24 both in 2020 and 2021, more reliable or less

1 reliable; is that right?

2 A. It doesn't -- it's apples and
3 oranges. The comments do one thing, and the
4 survey does another. Again, without being --
5 without knowing how that respondent answered the
6 question, you just -- it would be inappropriate
7 to make that claim.

8 Q. If we go back to the particular
9 metric response that we were looking at. This
10 person goes on to write that -- and this is just
11 across from "SMART format," about three lines
12 down from the last highlight. It begins, "The
13 idea that all metrics exist is astounding."

14 Do you see where I'm at?

15 A. Yes.

16 Q. "It seems that some are inversely
17 proportional to patient safety. For example,
18 decreased wait times means less time spent on
19 filling a prescription and other tasks impacting
20 how quickly that script can process so our
21 patients don't have to wait a few minutes
22 longer.

23 "Metrics have made pharmacy into a
24 fast food like scenario. And we get scolded by

1 the patients and corporate alike if they have to
2 wait longer. We are not treated like health
3 care professionals in a health care setting
4 focused on patient safety. We are treated like
5 a burger flipper trying to get out the next meal
6 as quickly as possible hoping no harm comes of
7 undercooked meat."

8 Did I read that correctly?

9 A. Yes.

10 Q. Do you believe that this
11 pharmacist felt that there was a correlation or
12 connection between the metrics and a safe work
13 environment and the dispensing of medications?

14 MS. WOHL: Objection to form.

15 A. Well, I'm reading it again to see
16 if this pharmacist referenced dispensing. So I
17 don't know that that is -- that I would say
18 that's what this is about. This is about how
19 fast they have to fill prescriptions.

20 Q. And they say in the line there,
21 "It seems" -- it says, "The idea that all these
22 metrics exist is astounding."

23 Do you see that?

24 A. Yes.

1 Q. "And it seems that some are
2 inversely proportional to patient safety."

3 What do you think the pharmacist
4 is talking about there of causing the patient to
5 have to wait? What are they waiting on?

6 MS. WOHL: Objection to form.

7 A. Yeah, I think we need to back up
8 to what your initial question was.

9 Q. I'm happy with this one.
10 What is it that you think that the
11 pharmacist -- that the patient is waiting on
12 that this pharmacist is concerned about patient
13 safety? What is it the pharmacist do you think
14 is doing that may impact patient safety by
15 causing the patient to wait?

16 MS. WOHL: Objection to form.

17 A. I have no knowledge of what they
18 might be doing that causes patients to wait.

19 Q. So you don't really know at all
20 what they're referring to as to why it would be
21 inversely proportional to patient safety if
22 they're feeling pressure to fill the
23 prescription quicker?

24 A. I don't know what they mean by

1 "patient safety," and I don't -- I don't know
2 what it is that is beyond -- that their
3 metrics -- I have no professional knowledge of
4 what their performance strategies are like.

5 Q. How did you feel when you read
6 this comment with respect to how the pharmacist
7 feels? How did it make you feel?

8 MS. WOHL: Objection to form.

9 A. This particular comment? I mean,
10 I read a lot of comments. So I saw that there
11 are some pharmacists who have concerns.

12 Q. Yeah. But I'm asking how those
13 concerns made you feel, if anything.

14 MS. WOHL: Objection to form.

15 A. I don't know that I have an answer
16 to that. I don't know how to characterize it or
17 that I would. You know, in my work, I read a
18 lot of comments, so ...

19 Q. Did you know, just in having your
20 prescriptions filled, that some pharmacists are
21 measured on their performance to a tenth of a
22 second?

23 A. I did not know.

24 MS. WOHL: Objection.

1 Q. Did you know that pharmacists have
2 felt that this type of performance metrics makes
3 them anxious and makes them worried about
4 patient safety?

5 MS. WOHL: Objection to form.

6 A. I did not know.

7 Q. As a customer, does this concern
8 you?

9 MS. WOHL: Objection to form.

10 A. I do not know that this is germane
11 to my pharmacist and my experience there.

12 Q. Okay. Overall -- not just this
13 particular comment, but overall, were you
14 surprised by the comments that you read in the
15 pharmacist survey?

16 A. Surprised.

17 Again, it's not uncommon for me to
18 read comments in surveys. So I don't know what
19 you're trying to get at here.

20 Q. Did it surprise you or did you
21 expect that pharmacists would have these kinds
22 of comments about their work conditions?

23 MS. WOHL: Objection to form.

24 A. I did not know what to expect. So

1 the comments are the comments. They are what
2 they are. They're a corpus of data as far as
3 I'm concerned.

4 Q. So these survey results to you are
5 just -- it's just data to analyze? It
6 doesn't -- it doesn't make you concerned one way
7 or the other about the work that the pharmacists
8 are doing and the pressure that they're feeling?

9 A. It was not my assignment to figure
10 that out. Professionally that's outside of my
11 role.

12 Q. The Ohio Board of Pharmacy, you'd
13 agree that they're specialists in the field of
14 pharmacy in a way that you're not, true?

15 A. That's right.

16 Q. They described these results to
17 the governor of the State of Ohio as startling.

18 Did that surprise you?

19 MS. WOHL: Objection to form.

20 A. I don't know how to answer your
21 questions about being startled or surprised. It
22 is what it is.

23 Q. Did you factor the fact -- did you
24 consider that the Ohio Board of Pharmacy

1 specialists in the area of pharmacy in Ohio
2 considered these results and the comments
3 startling when offering your expert opinions
4 here?

5 MS. WOHL: Objection to form.

6 A. So the -- what you're referencing
7 was outside of my purview. What I read in
8 Mr. Davis' deposition is that when you asked --
9 or someone asked whether he was concerned, he
10 said -- he was very careful to say he would need
11 more information, that it wasn't enough to just
12 look at the numbers and have -- and form an
13 opinion based there.

14 Q. Now, that's the Kroger employee
15 said that he just wanted more data. He wasn't
16 concerned, right?

17 MS. WOHL: Objection to form.

18 Q. That's who you were referring to,
19 the Kroger employee, the health and wellness
20 director for Kroger?

21 A. He was pushing back on using the
22 word "concerned" to describe his reaction to it.

23 Q. Right. But I'm just verifying,
24 you mean the Kroger employee, though, right?

1 A. Mr. Davis.

2 Q. Yes, who worked for Kroger,
3 correct?

4 A. Yes.

5 Q. But that wasn't what Mr. McNamee
6 said from the Ohio Board of Pharmacy, which is
7 who I asked you about.

8 A. Oh, I'm sorry.

9 Q. His response was that it was
10 startling, the results, correct?

11 A. I don't recall that part of his
12 deposition.

13 Q. And Mr. McNamee doesn't work for
14 Kroger, right?

15 A. Unless something has changed.
16 Correct.

17 Q. Did you review Kroger's
18 compensation policies?

19 A. I did not.

20 Q. Are you aware that their policies
21 provided increased compensation based on a
22 variety of metrics, such as whether wait times
23 are accomplished, the number of prescriptions
24 filled, customer satisfaction?

1 Were you aware of that?

2 MS. WOHL: Objection to form.

3 A. Sorry.

4 I have no knowledge of Kroger's
5 compensation policies.

6 Q. Okay. And no one from Kroger
7 shared that with you to perform your analysis?

8 A. No.

9 Q. Okay. Are you aware that Kroger's
10 performance policies set certain sales
11 expectations for pharmacists?

12 Were you aware of that?

13 MS. WOHL: Objection to form.

14 A. I'm unaware of Kroger policies.

15 Q. Okay. So I just want to make sure
16 I understand. Do you believe that whether a
17 pharmacist believes they work in an environment
18 that allows for safe patient care, that that has
19 no bearing on the dispensing of opioids and
20 controlled substances?

21 MS. WOHL: Objection to form.

22 A. My job was to look at the data
23 before me. So what I believe did not inform my
24 analysis.

1 Q. Yeah, but your opinion is that --
2 is that the issue of whether a pharmacist, in
3 responding to the survey, thought that they were
4 providing a safe and effective work environment
5 was not impacted by the dispensing of controlled
6 substances?

7 You couldn't make that connection,
8 correct?

9 MS. WOHL: Objection to form.

10 A. The data do not substantiate that
11 connection.

12 Q. And you don't think there's any
13 connection between them at all, true?

14 MS. WOHL: Objection to form.

15 A. I'm saying we don't know. We
16 don't have proper data to support that claim.

17 Q. And is it your opinion that the
18 only way that could have been accomplished was
19 if they had specifically asked about opioids?

20 MS. WOHL: Objection to form.

21 A. That would give it content
22 validity; that is, if that's what they wanted to
23 know, then they would ask questions about that.

24 Q. So there were questions about

1 whether a pharmacist had time to take a lunch
2 break. And do you think that has any connection
3 with safely dispensing controlled substances?

4 A. I don't know.

5 Q. Well, why would -- strike that.

6 But is it fair to say that you
7 don't have enough experience in the practice of
8 pharmacy to know how the impact of staffing
9 levels or metrics or workload or workflow would
10 bear on the dispensing of controlled substances;
11 is that fair?

12 A. That's fair. I have no experience
13 working in a pharmacy.

14 MR. ELSNER: Okay. It's about --
15 why don't we go off the record real
16 quick.

17 THE VIDEOGRAPHER: Off the record
18 at 12:00 p.m.

19 - - -

20 (Thereupon, at 12:00 p.m. a luncheon
21 recess was taken until 12:45 p.m.)

22 - - -

23

24

1 Friday Afternoon Session
2 January 20, 2023
3 12:45 p.m.

4 - - -

5 THE VIDEOGRAPHER: We are back on
6 the record at 12:45.

7 BY MR. ELSNER:

8 Q. Good afternoon. Dr. Selzer, one
9 of the questions that you set out to answer --
10 and if you want to look at it, you're welcome
11 to -- on page 11 of your report, and that is
12 whether the survey responses should be
13 understood to reflect an accurate view of all
14 licensed pharmacists working in Ohio; is that
15 right?

16 A. That's right.

17 Q. Okay. In order for the survey
18 results to be useful, must they reflect the
19 views of all pharmacists in Ohio?

20 A. No.

21 Q. Why not?

22 A. The idea of a survey is to
23 weigh -- collect the opinions of a few and that
24 they would stand for the universe, that's the
ideal, and there are methods that you can employ

1 to get you closer there. But that's not to say
2 that the findings by themselves, however their
3 flaws might be, aren't useful.

4 Q. Okay. So the results of the
5 survey tell us something about how pharmacists
6 in Ohio feel about their workplace and workload,
7 correct?

8 A. That's correct.

9 Q. Okay. And there could be some
10 usefulness of that, regardless of whether it
11 meets every methodical test, to be able to
12 extrapolate those results to every pharmacist in
13 Ohio, true?

14 A. That's right.

15 Q. Okay. And, in fact, you have --
16 you've gone through the report and identified
17 for us some of the information that's conveyed
18 with respect to certain questions on page 10
19 and 11, true?

20 A. That's right.

21 Q. Okay. And you concluded that
22 without regard to whether or not the respondent
23 pool is reflective of a cross-section of all
24 licensed pharmacists in Ohio, there are specific

1 questions that are answered by the data, true?

2 A. I'm going to sort of step back
3 from -- that's a pretty hard bar that you're
4 putting there.

5 The reason that I'm qualifying
6 this is that we have a response rate of
7 20 percent. And it could be that the other
8 80 percent would not feel the same as this
9 20 percent, and we don't know.

10 And we don't -- we didn't have a
11 way to know whether there was response bias in
12 that particular types of pharmacists or
13 pharmacists with particular views were more
14 likely to respond to this.

15 That's not uncommon in most
16 surveys. That's a -- that's -- there are whole
17 conferences held on the subject of non-response.

18 So with that caveat, there are
19 some findings that are persuasive.

20 Q. Okay. And we're going to talk
21 about the response rate in a few minutes.

22 But on page 9 of your report under
23 D, summary of the survey data, you write, do you
24 not, that "Without regard to whether the

1 respondent pool is reflective of a cross-section
2 of all licensed pharmacists working in Ohio,
3 here are the questions the data answer."

4 Correct?

5 A. I'm saying here are answers, yes.

6 Q. Here are questions the data
7 answers, correct? And the answers are, a
8 majority of pharmacists express concern about
9 having enough time for patient care.

10 The answer to that is true,
11 correct?

12 A. That's right.

13 Q. If we go on to page 10, the
14 question is, "Do a majority express concern that
15 they have adequate staffing by pharmacists to
16 allow for safe patient care?"

17 And the answer is "Yes," correct?

18 A. Yes.

19 Q. In fact, 68 percent of the
20 respondents felt that way, and 39 percent of
21 that 68 percent strongly felt that way, true?

22 A. True.

23 Q. The next question that the survey
24 answers is, "Do a majority express concern that

1 they have adequate staffing by pharmacy

2 technicians to allow for safe patient care?"

3 And the answer is "Yes," correct?

4 A. Correct.

5 Q. 75 percent of the respondents felt

6 that their work environment did not have

7 sufficient pharmacy technician staffing to allow

8 for safe patient care, right?

9 A. Right.

10 Q. So it wasn't just a majority; it

11 was 75 percent of those that responded?

12 A. That's right.

13 Q. Similarly, there were concerns

14 expressed about the workload-to-staff ratios,

15 correct?

16 A. Yes.

17 Q. And in that circumstance,

18 72 percent disagree, including 37 who strongly

19 disagreed with the statement, "I feel that the

20 workload-to-staff ratio allows me to provide for

21 patients in a safe and effective manner."

22 Correct?

23 A. Correct.

24 Q. And you also agree that the survey

1 does answer, from the respondents, "Do a
2 majority express concern about taking on
3 additional services without additional
4 staffing?"

5 Correct?

6 A. Correct.

7 Q. And in this case, it wasn't just a
8 majority, it was 88 percent of the respondents
9 agreed, true?

10 A. True.

11 Q. And do you know what all the
12 additional services are that have been added to
13 the responsibility of pharmacists, that they
14 would have considered in answering this
15 question?

16 A. The question wording itself speaks
17 to immunizations and testing.

18 Q. Right. And it says "et cetera."
19 Do you know what the et cetera would mean?

20 A. I do not know.

21 Q. Did you make any effort to learn
22 what other additional services and tasks that
23 pharmacists were expected to undertake?

24 A. No.

1 Q. Did you make any effort to
2 determine what additional services and tasks
3 pharmacists had to undertake versus what they
4 previously had to do?

5 A. No.

6 Q. And then there was also a question
7 in the 2021 survey about whether a majority
8 feared voicing workload concerns to their
9 employers.

10 And the answer was that, yes, they
11 did, true?

12 A. True.

13 Q. In fact, 72 percent felt that --
14 72 percent disagreed with the statement, "I feel
15 safe voicing any workload concerns to my
16 employer."

17 Correct?

18 A. Right.

19 Q. And 37 percent of that 72 percent
20 felt that very strongly, true?

21 A. Right.

22 Q. Does the -- did you consider the
23 fear that respondents might have about voicing
24 workload concerns when looking at the response

1 rate to the survey?

2 A. The deposition of Mr. McNamee made
3 clear that these were -- that the surveys were
4 sent in a way that permitted the pharmacist to
5 respond anonymously without their name attached,
6 as would be common.

7 Q. Okay. And that was a positive
8 thing about the survey, correct?

9 A. Yes.

10 Q. Because it would be more likely
11 that people would answer more honestly if their
12 employers and others didn't know who they were
13 and how they were responding, true?

14 A. That's right.

15 Q. Okay. And so -- but you'd agree
16 with me that anyone that thinks they get an
17 e-mail and they're responding to a survey, that
18 there's a fear that someone might be able to
19 orchestrate who they are and trace it back to
20 them, correct?

21 MS. WOHL: Objection to form.

22 A. I don't know.

23 Q. You never considered that, in all
24 the work you've done in polling and surveys,

1 when you say it's anonymous that people might
2 be -- that there's some people that might be
3 concerned that they'd be able to figure it out?

4 A. It would be speculation on my part
5 to say whether that happens or doesn't happen.

6 Q. You never studied it?

7 A. Our methods are to keep that from
8 happening, so that's -- that's our mindset.

9 Q. And the reason you're keeping it
10 from happening is because you fear people won't
11 be -- won't respond or won't really be honest in
12 their responses if they think that somebody may
13 be able to determine who they are, right?

14 A. That's right.

15 Q. But when you were considering the
16 response rate here, did you factor in one way or
17 the other the fact that those who responded to
18 the survey -- and these are the ones who
19 responded -- that 72 percent feared or worried
20 about voicing workload concerns to their
21 employers?

22 Did you factor that in?

23 MS. WOHL: Objection to form.

24 A. Factor that into what?

1 Q. The response rate to the survey.

2 A. No.

3 Q. And I think that's not really
4 exactly what the question was, right? You've
5 kind of reframed it here. You framed it, on
6 page 10, is "Do a majority fear voicing workload
7 concerns to their employers?" That's what
8 you've written just above the last bullet on
9 page 10, correct?

10 A. Correct.

11 Q. But the real question was, if we
12 go back to your appendix on X-36, "Do I feel
13 safe" -- I guess we go to 35 if we want to look
14 at comparing -- doing a comparison. "Do I feel
15 safe voicing any workload concerns to my
16 employer?"

17 True?

18 A. That's the wording of the
19 question. Yes.

20 Q. But you changed the wording of the
21 question to just "Do they fear." Safe, to me,
22 seems even stronger, right, than fear?

23 MS. WOHL: Objection to form.

24 A. I didn't hear a question there.

1 Q. Well, do you agree with me, that
2 "safe" seems stronger --

3 A. I don't know that "safe" or
4 "fear" -- I don't know what the intensity factor
5 relationship would be.

6 Q. Okay. Why did you change "safe"
7 to "fear"?

8 A. I don't have an answer for you.

9 Q. And that was a question that
10 wasn't asked in the 2020 survey but was asked in
11 the 2021 survey. Or maybe it was asked in both.
12 I thought it wasn't, but --

13 A. There's comparison data there.

14 Q. Yes, it does appear there is.
15 Okay.

16 And one of the issues that you
17 discuss in the -- I guess in the general
18 sections of your report, is the survey, does it
19 have a meaningful universe of people who are
20 responding.

21 I assume that there's no argument
22 here that "all pharmacists in Ohio" is a
23 meaningful universe for a response to the
24 survey; is that true?

1 A. There was some qualification that
2 they reside in Ohio.

3 Q. And other than that, was there any
4 other -- I mean, you'd agree with me that by
5 selecting licensed pharmacists in Ohio, who
6 reside in Ohio, that's a meaningful universe to
7 ask these questions to, correct?

8 A. Given that the sponsor of this is
9 the State of Ohio Board of Pharmacy, yes.

10 Q. Okay. I'm just trying to figure
11 out where we have some agreement and where we
12 don't.

13 Now, you do quibble with the fact
14 that, you know, it could be that some
15 pharmacists receive this that don't have a
16 license at the moment, true?

17 A. Where is it that you see that?

18 Q. I think it's on page 3 of your
19 report. There was "no effort to remove those
20 who are licensed but not practicing"?

21 A. I believe that came from
22 Mr. McNamee's deposition.

23 Q. Okay.

24 A. So there was some quibble about

1 whether they needed to be practicing as opposed
2 to just living in Ohio with a valid license.

3 Q. And do you believe that
4 pharmacists that are licensed but not
5 necessarily practicing when they complete the
6 survey might be an important source of
7 information?

8 A. I do not know.

9 Q. They could be or couldn't be? You
10 have no idea, correct?

11 A. No idea. I have no idea how many
12 would be -- would fit that criteria.

13 Q. Does failing to identify or
14 distinguish between those who are practicing or
15 not invalidate the survey results, in your
16 opinion?

17 MS. WOHL: Objection to form.

18 A. There's -- it raises a question.
19 So on its own does it invalidate? No. But it
20 raises a question that would lead one to search
21 for an answer to that.

22 Q. Let's talk a little bit about
23 response rates. I think when you kind of first
24 mention response rates, you say it's true that

1 many modern surveys have low response rates,
2 correct?

3 A. Yes.

4 Q. Okay. And what are the typical
5 response rates for surveys in the modern
6 setting?

7 A. Well, it is highly related to what
8 the method of contact is. So a telephone
9 survey, for example, where you're calling
10 random -- randomly generated phone numbers or
11 even calling from a voter list where you might
12 have a name attached to a phone number, those
13 response rates are in the low single digits,
14 industry-wide.

15 Q. Okay. And so the fact that the
16 response rates had a low single digit, doesn't
17 render the study necessarily unreliable,
18 correct?

19 A. Correct.

20 Q. And we discussed the fear of
21 retribution or feeling unsafe about reporting
22 working conditions to their employer being about
23 72, 73 percent of those that responded to the
24 survey. Did you factor in at all the amount of

1 time that pharmacists felt they had to safely
2 perform their jobs in evaluating the response
3 rate to the survey here?

4 A. No.

5 Q. Would you agree with me that
6 logically if a pharmacist doesn't think they
7 have enough time to safely perform their job
8 duties, that it might impact the number of
9 people who have the time to respond to the Ohio
10 Board of Pharmacy survey?

11 A. I don't know.

12 Q. You don't think that's a logical
13 conclusion to make?

14 A. Well, given that there were
15 significant -- over 1,000 pharmacists completing
16 the survey who typed in quite long comments
17 adding to the time, I can't say -- I can't say
18 anything about the people who did not respond to
19 the survey and why that might have been.

20 Q. Okay. Do you think it's
21 relevant -- the fact that so many respondents
22 responded that they didn't feel that they had
23 adequate time to safely perform their jobs, do
24 you think that's relevant to evaluating the

1 response rate to the Ohio Board of Pharmacy
2 survey?

3 A. As I would say, on its own, it's
4 just a single data point that describes the
5 data. On its own, it's not an invalidator.
6 I look for other things that would try to
7 explain or would be sort of in that basket of
8 concerns about the survey methodology.

9 Q. Okay. But you didn't think that
10 was important enough to study or to conclude or
11 to see if it had any impact; is that fair?

12 MS. WOHL: Objection to form.

13 A. That would be outside of my
14 assignment.

15 Q. Well, were you asked not to do
16 that?

17 A. There were lots of things I wasn't
18 asked to do.

19 Q. Well, there's something where
20 you're affirmatively asked to do a thing. In
21 this assignment, were there certain things that
22 you were asked not to evaluate?

23 A. No.

24 Q. So no one told you, "Hey, don't

1 look at reasons that the response rates to the
2 survey may be low," correct?

3 A. No. And to qualify, I'm not
4 saying that this is exceptionally low by
5 industry standards. So it's not a red flag in
6 and of itself.

7 It's worth noting that the
8 response rate changed between the two surveys.

9 And it's worth noting that this
10 was sponsored by the licensing organization,
11 that there was a professional relationship
12 between the sponsor and the respondents, and we
13 tend to think that would increase the response
14 rate because they would wish to have their voice
15 heard. That's, I know, the theory behind survey
16 research, period.

17 Q. Okay. So you're not going to
18 offer an opinion that the response rate in and
19 of itself was so low that it would discredit the
20 survey?

21 A. That's right.

22 Q. Okay. And, in fact, you've done
23 surveys where the response rate is lower than
24 the response rates in these surveys, true?

1 A. Yes.

2 Q. And the study that you referred to
3 with Mr. Schneider, in that case, the response
4 rate was 17 percent, true?

5 A. I'm sorry. The survey I referred
6 to with Mr. Schneider?

7 Q. Let me pull it up for you. Why
8 don't we mark it. We'll do it MR 4373.

9 MR. ELSNER: Mark it as Exhibit 6
10 [sic].

11 - - -

12 (Selzer Deposition Exhibit 5 marked.)

13 - - -

14 BY MR. ELSNER:

15 Q. Is this the article that you
16 published with Mr. Schneider?

17 A. I don't know that I've seen it in
18 this format.

19 Q. Well, take a look at it if you
20 need to.

21 A. I'll take it on face value that it
22 is.

23 Q. I don't think anyone is trying to
24 trick you.

1 Did you publish an article with
2 Mr. Schneider regarding the health insurance
3 cost on consumers in Iowa?

4 A. Well, as you can see,
5 John Schneider was the lead author, along with
6 another academic there. They were using our
7 data in order to write this article, but I was
8 not a coauthor in terms of writing this article.

9 Q. Okay. If you turn to page -- what
10 we've marked as 4373_5 of this document, which
11 is page 127 of the publication. This talks
12 about the methods of how the survey was
13 conducted, and it indicates that the response
14 rate to the survey was 17 percent, correct?

15 A. I'm looking for it.

16 Yes.

17 Q. Okay. And this is the survey that
18 you conducted that you were responsible for,
19 correct?

20 A. Yes.

21 Q. And that 17 percent didn't render
22 the survey unreliable in any kind of way, true?

23 A. This survey was using random digit
24 dial telephone numbers as our sample frame. And

1 today, the typical response rates for that
2 methodology are in the low single digits.

3 So this was done back in 2005.
4 17 percent doesn't surprise me as being on the
5 high side, although in Iowa, we get a little bit
6 better response rates than we might other
7 places.

8 So it's neither high nor low nor
9 certainly not disqualifying.

10 Q. And I think that what you would
11 like to see -- what you would like to have seen
12 in the Ohio Board of Pharmacy survey results
13 were demographics in order to weigh the data; is
14 that true?

15 A. Demographics or other meaningful
16 metrics that describe the full universe, the
17 full complement of licensed pharmacists
18 practicing in Ohio.

19 Q. And some of the things you
20 mentioned were age, the gender, the geographic
21 region of the respondents, along with their --
22 how many were in particular areas of practice;
23 is that right?

24 A. That's right.

1 Q. Am I missing any?

2 A. I think those are the ones
3 I mentioned.

4 Q. Okay. But you do recognize that
5 the Board did collect certain demographic
6 information related to the respondents, true?

7 A. I do not know.

8 Q. Well, we know -- we at least know
9 how many respondents identified as having worked
10 in a chain pharmacy, a large chain grocery store
11 or an independent pharmacy or hospital setting,
12 correct?

13 A. We know from a question that they
14 asked of the respondent, not from anything they
15 would have in their records of how they would
16 characterize the setting, their workplace
17 setting.

18 Q. Right. But for those who
19 responded to the survey, we know how many
20 responses they received from those who worked in
21 a large chain pharmacy or a grocery store
22 setting or a hospital, true?

23 A. So this sounds like a small
24 detail. This is self-reported. It didn't

1 come -- it's not out of the licensing database
2 for these pharmacists. This is self-reported.

3 Q. Do you believe, though, because
4 it's self-reported that pharmacists may
5 incorrectly answer what area of practice they
6 practice in?

7 A. I'm saying that there are -- it's
8 a bit like party ID. When we ask you to
9 self-identify what your party is, it may be
10 different from how you're registered.

11 Now, that could be a wide
12 variation here. But what one person thought was
13 Other, another person might have said was
14 Independent, that there's no necessary
15 conformity to those things.

16 Q. Wait a second.

17 Do you think that the person
18 answering a survey result before a primary in
19 Iowa about whether or not they are a republican
20 or not would generate the same accurate
21 information as a request to a pharmacist from
22 their regulator asking them to identify their
23 primary area of practice?

24 A. My point is saying, what -- these

1 words were provided --

2 Q. Whoa, whoa. Yes or no first, and
3 then you can tell me your point.

4 MS. WOHL: Objection.

5 A. I don't know how to answer that
6 question.

7 Q. You don't -- okay.

8 So the answer to my question is,
9 no, you do not know whether the accuracy rate of
10 a person in Iowa right before a primary being
11 asked to identify their party affiliation about
12 whether they're a republican or a democrat or an
13 independent is more or less reliable than a
14 pharmacist being asked by their regulator what
15 their primary area of practice is?

16 A. So there are two parts to this.
17 And let me break them apart.

18 Reliable means would they answer
19 the same way if we asked them again. And
20 there's a fair amount of blurriness that happens
21 with party identification. So the word
22 "reliability" there is not one that I would want
23 to use.

24 The second part of your question

1 is, I think, trying to get at whether the
2 distribution by primary practice settings would
3 give -- that if a pharmacist would give the same
4 answer -- that everyone was thinking about the
5 same thing when they filled in mail order, when
6 they filled in other, when they filled in
7 independent.

8 It's a question of definitions.

9 And the respondent was allowed to define for
10 themselves what that is rather than pull from
11 the database of licensees where it is that
12 they're working.

13 And maybe that doesn't exist, but
14 it's -- my point being that we don't know what
15 the full universe looks like in terms of
16 workplace settings.

17 Q. So let's look at what the actual
18 question is.

19 If you look at question 10 at 4202
20 on page 23. And they've been asked in
21 question 10, "What is your primary practice
22 site?"

23 And then it provides a definition
24 of these; grocer, large change grocer more than

1 12 locations.

2 Do you see that?

3 A. I do.

4 Q. Do you think that a pharmacist, in
5 answering that question, would be confused as to
6 whether they work for a grocery store with more
7 than 12 locations or do they work as an
8 inpatient in a hospital or a mail order
9 pharmacy, or a long-term care facility?

10 A. So I agree that there is some
11 effort to define these things. What I see in
12 the data was a difference between the first
13 survey and the second survey in how people were
14 responding to that. So that raises a question
15 as to whether these definitions were, in fact,
16 clear.

17 And I think you're showing me from
18 2020, is that right, not from 2021? Because
19 I think 2020 they didn't compute the
20 percentages.

21 Q. This is 2020. Yeah.

22 So I guess my second question is,
23 I'm a little surprised by -- I can understand
24 how somebody might vacillate between being a

1 republican or an independent or a democrat
2 depending on the election cycle and who's
3 running and how I feel about all sorts of
4 things.

5 But are you saying that that same
6 vacillation would occur among pharmacists
7 defining what kind of practice area they work
8 in? I mean, it's not really opinion based, is
9 it? It's where you work.

10 A. Right. So I don't know what to do
11 here with the 344 who include VA, nuclear, or
12 prefer not to say. I don't know what proportion
13 of those prefer not to say.

14 And I think the point with regard
15 to the report is that there were differences,
16 meaningful differences, between 2020 and 2021 in
17 how that question was answered.

18 Q. Well, but there could be things
19 that account for that. And I think what I'm
20 hearing you assume is that people didn't
21 understand how to define their practice area.

22 MS. WOHL: Objection to form.

23 Q. Am I right?

24 A. I'm saying that I looked at this,

1 because in theory, this might have been a way to
2 adjust the data from year one to year two so
3 that both were a more accurate reflection of a
4 cross-section of pharmacists.

5 Q. Is 1,000 respondents who responded
6 to this survey working in -- who identified as
7 having worked in a grocery -- large chain
8 grocery store, like a Kroger, is that a
9 significant number of respondents?

10 A. Well, "significant" has a very
11 particular meaning in my world. Is it --
12 because the actual number of -- we don't know
13 how many people working for large chains like
14 Kroger were sent a survey to be -- to respond to
15 it. We don't know what portion of that universe
16 answered this question.

17 It could be a smaller number. It
18 could be a bigger number than the overall
19 average. We don't know.

20 Q. I guess independent of the
21 methodology, is responses from 1,000 people who
22 work in that practice setting useful to
23 understand how at least 1,000 people in the
24 grocery store setting feel about their

1 workplace?

2 A. So the science of survey research
3 is that you want to build the data so that you
4 can look at a relatively small group of people
5 and generalize it.

6 And so the science behind that has
7 to do with, well, how did you choose these
8 people? And was there a random selection
9 involved, or was there a reason why some would
10 respond and some wouldn't respond? Is there a
11 response error? Is the response biased there?

12 So all on its own, people think,
13 "Well, you get 1,000 people, it's going to mean
14 something." And the survey research answer is
15 that is not necessarily. Not if it's -- not if
16 it's not a well-stirred pot, as George Gallup
17 used to say. He said, "You don't have to eat
18 the entire pot, but you need to pull a
19 representative spoonful from a well-stirred
20 pot."

21 And we have no information to
22 gauge whether that thousand does or does not
23 represent an accurate cross-section of all
24 pharmacists working at large chains and grocery

1 stores.

2 Q. And so you don't know the answer
3 one way or the other? You can't say that the
4 study is not reliable, correct?

5 A. I missed the end of your question.
6 Could you repeat?

7 Q. You don't have the statistics to
8 know one way or the other? It very well could
9 be that this is an adequate cross-section of all
10 pharmacists working in a large chain grocery
11 store setting, true?

12 A. In Ohio. That's right.

13 Q. Yes, in Ohio.

14 Okay. And then -- and the survey
15 also captured other data points, not just
16 practice site. It also captured what their role
17 is in the pharmacy, true?

18 A. I don't recall.

19 Q. Can we go to the next page.

20 "What's your primary role in your work
21 environment?" Am I a staff pharmacist, am a
22 responsible person, a manager, am I'm a floater?

23 Do you know what a floater is?

24 A. I have a general idea.

1 Again, my question would be, is
2 this -- this appears to be from the 2020 survey
3 in that there are not percentages there. If
4 that question were not asked in the 2021 survey
5 and that was my assignment, then I made no
6 opinion about this.

7 Q. I'm confused then. You were
8 assigned only to analyze the 2021 survey, not
9 the 2020 survey?

10 A. That was my assignment. I needed
11 to look at the 2020 survey because there was
12 very little explanation for how the survey was
13 conducted in the 2021 survey.

14 Q. So all the opinions you're
15 offering here really only relate to the results
16 of the 2021 survey, not the 2020 survey at all?

17 A. No, in that they were both
18 conducted in the same way. But the only way
19 that I learned how the 2021 survey was conducted
20 was to assess the 2020 survey.

21 Q. What was your specific assignment
22 in terms of analysis of the 2020 survey?

23 A. Well, when I discovered on my own
24 that there wasn't any description of the

1 methodology, I alerted the attorneys to say,
2 "There's no methodology here. Oh, wait a
3 second. There's reference to this 2020 survey.
4 Let me take a look at that."

5 And they said, "Okay."

6 Q. Oh. So they only shared with you
7 the results of the 2021 survey initially, and
8 you had to ask them to send you the 2020 survey;
9 is that right?

10 A. Or I was able to find it on my
11 own. Yeah.

12 Q. Oh. So they may not have even
13 provided it to you? You may have had to
14 research that on your own; is that right?

15 A. I believe that's my recollection,
16 that I initiated that. That was going to be
17 required in order for me to comment at all on
18 the 2021 survey, because there was no
19 description of method in the report. This is a
20 follow-up to the 2020 survey.

21 Q. Did you ask them why they didn't
22 send you the results of the 2020 survey?

23 A. I did not have time.

24 Q. You didn't have time to ask them?

1 A. I moved forward on getting the
2 work done.

3 Q. Did anyone ever tell you Kroger
4 conducted a survey of their own pharmacists
5 asking many of these same or similar questions?

6 A. I have heard that recently.

7 Q. They didn't share the results of
8 that survey with you?

9 A. They did not.

10 Q. Did they tell you that that survey
11 existed?

12 A. Recently.

13 Q. Recently when? Today?

14 A. This week.

15 Q. All right. So they had you do all
16 this work, analyzing the Ohio Board of Pharmacy
17 survey to say we're not sure if it's reliable,
18 but they didn't even tell you that they did a
19 survey themselves of pharmacists until this
20 week?

21 A. That's correct.

22 Q. Don't you think it would have been
23 important to know what Kroger pharmacists felt
24 about these questions?

1 A. In terms of the assignment I was
2 given and that I didn't know about it, no.

3 Q. Are you worried they're hiding
4 stuff from you?

5 MS. WOHL: Objection; form.

6 A. No.

7 Q. I am.

8 All right. So they gave you the
9 2021 survey, but didn't give you the 2020
10 survey, true?

11 A. Correct.

12 Q. And they did a survey internally
13 of Kroger pharmacists that you've heard about,
14 but they haven't given you the results of that
15 survey for you to review it, true?

16 A. I don't know that the word
17 "they" -- who you're referring to there.

18 Q. Well, Kroger, Bowles Rice, the
19 lawyers that you work with, whomever.

20 A. You said, "They conducted."

21 Q. Kroger conducted a survey of its
22 own pharmacists.

23 A. Correct. The attorneys did not --

24 Q. Were you aware of that?

1 A. The attorneys did not make me
2 aware of that --

3 Q. Would that have been helpful to
4 you --

5 A. -- until recently.

6 Q. -- in analyzing the results of how
7 Kroger pharmacists felt about their workplace,
8 to have access to that information?

9 A. In order to what? In order to
10 evaluate this survey?

11 Q. In order to evaluate how Kroger
12 pharmacists felt about their work conditions.

13 A. That was not my assignment.

14 Q. Well, you said that the result of
15 this survey couldn't be extrapolated to Kroger
16 pharmacists, true?

17 A. I said there was not sufficient
18 data that made it clear when and how many
19 respondents were talking about Kroger beyond --

20 Q. And all along they had a survey
21 where they knew what the Kroger responses were,
22 and they didn't tell you, true?

23 MS. WOHL: Objection to form.

24 A. My analysis was of this survey.

1 Q. Ma'am, answer my question.

2 All along they had -- they had
3 information about how Kroger pharmacists felt
4 about their working conditions, and they did not
5 share that with you, correct?

6 MS. WOHL: Objection to form.

7 A. I can say they did not share that
8 with me. That's correct.

9 Q. And sitting here today, you still
10 don't know what the results of that survey are,
11 or surveys?

12 A. That's correct.

13 Q. Do you know how many surveys they
14 conducted?

15 A. I do not.

16 Q. Did you ask?

17 A. I did not.

18 Q. All right. If we look at
19 page 24 -- and I appreciate that you didn't --
20 I guess you didn't study this. But they
21 captured information about the role that a
22 pharmacist worked in their workplace, true?

23 A. That's what I'm seeing on the
24 screen.

1 Q. Right. But you're seeing it for
2 the first time with me, correct?

3 A. I would have seen this in the 2020
4 report. I don't know that it was included in
5 the 2021. So we wouldn't have a comparison
6 chart.

7 Q. Did you consider the demographics
8 that they collected in the 2021 survey in
9 forming your opinions in this case with respect
10 to the primary role of the pharmacist or the
11 pharmacy staff in the workplace?

12 A. So this is self-reported primary
13 role in their work environment. And we have no
14 benchmark for the full universe to know if this
15 is representative of all licensed pharmacists in
16 Ohio.

17 That's my -- that's my concern
18 about how I would normally, and most survey
19 researchers of a particular caliber, would go
20 about ensuring that their respondent base looks
21 like the population of interest.

22 Q. Do you think people may --

23 A. So on it's own --

24 Q. -- not know what their role is?

1 MR. ELSNER: Objection. Let her
2 finish.

3 Q. I'm sorry. I didn't mean to speak
4 over you. Go ahead.

5 Let me back up and do this a
6 little bit broader.

7 I'll ask it this way: There's
8 certain demographic information that's
9 self-reported in the 2020 survey.

10 Dr. Selzer, did you consider the
11 responses to those survey questions in looking
12 at the demographics of those who responded to
13 the 2020 survey?

14 A. And when you say "looking at the
15 demographics," what do you mean by
16 "demographics"?

17 Q. Well, the first demographic is
18 their primary practice site on page 23 here,
19 134. Yes or no, did you consider this --

20 A. I don't know what you mean by
21 "consider this."

22 Q. Did you consider how many people
23 responded and identified as having worked in a
24 particular practice site when considering the

1 results of the survey?

2 MS. WOHL: Objection to form.

3 A. So the reason I would look at this
4 is to have a question in my mind as whether this
5 represents the real world proportionally or not.
6 Is it skewed toward one particular group here?

7 So I'm looking at whether, taken
8 together, this distribution looks like the full
9 complement, does it match the meaningful
10 universe. This was an opportunity of some data
11 that could have been used to adjust the data
12 where it's too many of one kind and not enough
13 of another to make it look like an accurate
14 cross-section.

15 So it informed my concern that the
16 data were not weighted. To my knowledge, there
17 was no discussion of weighting. So I assumed
18 that the data were not weighted in order to
19 address for known response bias or error.

20 Q. Did you ask Kroger if they had
21 data -- or counsel for Kroger if they had data
22 of how many people in Ohio worked in these
23 various practice sites?

24 A. I did not.

1 Q. Did you ask -- did you look at any
2 outside sources, Bureau of Labor Statistics or
3 any other third-party sources, to determine
4 whether -- how many people worked in these
5 various practice sites in Ohio?

6 A. I did not.

7 Q. Now, you've done that in other
8 surveys, right, where you weren't sure what the
9 results of the survey were, so you would look at
10 census data to make that comparison as an
11 external source, correct?

12 A. When I am the primary
13 investigator, yes. My job was to evaluate the
14 work that was done, not to redo work that was
15 done.

16 Q. I know, but part of your
17 evaluation -- the answer might exist in those
18 data sets, correct?

19 A. Well, I didn't have the data set,
20 so I don't know what was there and what wasn't
21 there. All I know is that their method didn't
22 include any information that these data were
23 used to make adjustments or whether -- I don't
24 know what the Ohio Board of Pharmacy has in its

1 database that could have been used to bring
2 these answers into alignment with a known
3 distribution.

4 Q. And counsel for Kroger didn't ask
5 the Board of Pharmacy that question at
6 Mr. McNamee's deposition, right?

7 MS. WOHL: Objection to form.

8 A. I don't recall that there was any
9 discussion of weighting in Mr. McNamee's
10 deposition.

11 Q. And you didn't ask Kroger if it
12 had information about practice site, true?

13 A. I did not.

14 Q. And you didn't do any external
15 research, as you might have done if you were the
16 investigator, to determine if this accurately
17 reflects a meaningful number of people by
18 practice site, true?

19 A. I was not the principal
20 investigator for this. So there are many things
21 I would have done differently.

22 Q. Okay. In the next one -- I'm
23 going to ask -- I don't know that we need this
24 colloquy with respect to each of these, but I

1 want you to go through them. I want to make
2 sure I understand.

3 So the next thing that they
4 captured was information about the pharmacist's
5 role, or the person responding to the survey,
6 their role in the pharmacy.

7 Did you consider they used
8 self-reported responses on the next page?

9 A. Again, did I consider? I don't
10 know what the real world -- and, you know, that
11 they didn't convert these to percentages. You
12 know, I can eyeball things pretty well. But I
13 don't know the extent to which this does or does
14 not reflect the actual distribution of licensed
15 pharmacists in Ohio. I don't know what to make
16 of this.

17 Q. And you didn't do any research to
18 figure out whether it did or didn't, correct?

19 A. I did not.

20 Q. Okay. And it also asks how many
21 shifts the person responding to this survey
22 worked on the next slide.

23 Did you consider that?

24 A. Again, I think because it --

1 I don't think these were asked in the 2021
2 survey, because I don't have comparative data on
3 this. Again, I wouldn't know what to make of it
4 really.

5 Q. I guess my point is, is it would
6 be important to know, would it not, of those
7 responding to the survey how long they worked,
8 what job they had in the pharmacy, what kind of
9 practice setting they were in. All of these
10 seem, to me, that they'd be important questions
11 that you'd want to know in evaluating the
12 responses to the survey, true?

13 A. Well, what is important to know is
14 whether this is a valid representation of all
15 pharmacists in Ohio. And I was not provided
16 data that would allow me to say, "Hey, this
17 looks about right," or "This is way off."
18 I don't know.

19 So if I'm looking to say whether
20 you can use these -- the data that were
21 collected to extend beyond the findings that are
22 here, I don't know.

23 Q. It also asks on page 31 here,
24 question 15, "How many years have you been a

1 pharmacist?"

2 Do you think this would be an
3 important question to know from respondents?

4 A. Important how?

5 Q. To see if there's a meaningful
6 cross-section or cross-people who were working
7 in the pharmacy?

8 A. It's only meaningful if I know
9 what the answers are for the full complement.

10 Q. Meaning how many people out of the
11 people who responded to the survey also worked
12 less than three years or more than 30 years?

13 Is that what you mean?

14 A. Well, are these not survey
15 responses that you're showing me? These are
16 self -- these are answers they gave themselves?

17 Q. These are answers they gave
18 themselves.

19 A. So what's meaningful is what's
20 true in the real world. And on its own, I do
21 not know whether this is what's true for the
22 full complement of pharmacists in the State of
23 Ohio.

24 Q. Do you think a pharmacist

1 answering this survey would lie about whether
2 they worked less than three years or more than
3 30?

4 A. I'm saying that because
5 100 percent of the pharmacists didn't answer
6 this question, that I cannot say with confidence
7 that this is the proper distribution. We don't
8 know. It may be something that the licensing
9 board has in their database, but that data were
10 not offered, those data.

11 Q. So when you say you would want to
12 know the gender or the sex of the person
13 responding to the survey, it's not that you want
14 to know the gender or sex of the person
15 responding to the survey based on how they
16 report it. You'd actually want to know based on
17 what -- on what? What the pharmacy believes
18 their gender or sex is, the pharmacy
19 association?

20 A. I need both. I need both.
21 Because if it's 60/40 -- you can choose which
22 way that's going to be -- in one and 75/25 in
23 the other, then I need to bring one into
24 alignment with the other in order for it to

1 reflect a proper cross-section.

2 Q. But that assumes that what your
3 objective is, is to understand what every --
4 whether the results of the survey are indicative
5 of how every other pharmacist in the state
6 feels, correct?

7 A. That is the goal of survey
8 research, to talk to a relative few and project
9 it -- generalize it to the full complement of
10 your meaningful universe.

11 Q. Why would knowing the gender or
12 sex of the respondent -- or would it -- be more
13 important than knowing how many years they
14 worked in the pharmacy or what type of pharmacy
15 setting they work in or how many hours in a
16 shift that they work given the context of the
17 questions that are being asked in the survey?

18 MS. WOHL: Objection to form.

19 Go ahead.

20 A. I'm not saying it would be more
21 important.

22 Q. In fact, I think to know whether
23 or not you have enough time to safely perform
24 your duties, I mean, my sense of -- I'd rather

1 know if someone's been doing this job for
2 30 years or doing it for two weeks, right?

3 MS. WOHL: Objection to form.

4 A. I don't know how to answer that.
5 I don't know that that's more important. The
6 goal in my even talking about these sorts of
7 demographics, if you will, are what do we know
8 for sure that represents everybody. And then
9 how does -- how does our dataset compare to
10 that.

11 And then using a statistical
12 procedure called weighting, where some people
13 you give them a little bit more and some people
14 you give a little bit less, that corrects for
15 the response bias, you can -- you have greater
16 confidence after that procedure that your
17 respondent pool does reflect all pharmacists in
18 the State of Ohio.

19 Q. But because you're not a
20 pharmacist and because you're not with the Ohio
21 Board of Pharmacy, to you, each of these data
22 points are just data points. And so to you
23 whether someone is a male or a female or whether
24 someone's been working for less than three years

1 or more than 30 years, it's just one other data
2 point? You can't evaluate which one is more
3 important or less and more in this setting,
4 true?

5 A. Well, I'm evaluating what they
6 reported out. And they didn't report out cross
7 tabs, for example, by these different segments.

8 So in terms of analyzing -- I
9 mean, it gives another tool to the principal
10 investigator for how they can understand where
11 there are -- where issues are of greater concern
12 or less concern.

13 But overall, again, the idea --
14 and age and sex are common -- commonly used to
15 adjust data files. So that's why I mentioned
16 those. But there were other opportunities
17 potentially that would have helped bring this
18 respondent pool into a demographic alignment, if
19 you will, to look like the overall -- and they
20 didn't do it, and, therefore, we don't know.

21 Q. We do know that the reporting on
22 the survey, the results of the survey, were
23 organized by what practice setting the
24 pharmacist was in, correct?

1 A. Correct.

2 Q. And, frankly, to determine how
3 people working in a large grocery store chain
4 like a Kroger might feel about their pharmacy
5 setting, it's not really so important to know
6 how many people identified as having worked in a
7 long-term care facility, true?

8 MS. WOHL: Objection to form.

9 A. True.

10 Q. And so --

11 A. Important in a different way, I'll
12 say.

13 Q. It's important if you're only
14 concerned about the global but not concerned
15 about the specific pharmacist working in a
16 particular sector, correct?

17 A. It's not the way I would phrase
18 the concern that's there. And, again, I wasn't
19 hired to be the analyst for this. So there's
20 lots of different ways to slice and dice data to
21 define the meaning of it.

22 Q. When you say "hired to be the
23 analyst," what type of work is that? What are
24 you referring to?

1 A. That would be looking at what the
2 overall findings say and then to dissect whether
3 there are certain subgroups who have different
4 opinions, who are aligned in a different way, to
5 get a more rich understanding of why the data
6 look like they do, not just what the data say.

7 Q. So you can't offer an opinion as
8 to why pharmacists in a large chain grocery
9 store setting, why their responses to whether
10 they feel that there's adequate staffing to
11 allow for safe patient care is worse than those
12 who work in a small chain pharmacy or in mail
13 order, correct?

14 MS. WOHL: Objection to form.

15 A. Correct.

16 Q. So if we pull up 4202, if we go to
17 .00013 on page 124, this kind of displays that,
18 right?

19 So with respect to the question,
20 "I feel that my work environment has sufficient
21 pharmacy technician staffing that allows for
22 safe patient care by practice site," those who
23 disagreed or strongly disagreed in a large
24 grocery store sector is significantly higher

1 than those who responded that way in the small
2 chain pharmacy, correct?

3 A. But lower than those in the large
4 chain standalone.

5 Q. Correct.

6 But you're not going to offer an
7 opinion on the analysis of that difference,
8 correct?

9 A. As to what would explain it?
10 That's correct, I'm not here to do that.

11 Q. Okay. And you haven't made any
12 effort to determine that? You weren't asked to
13 do that? You're not going to offer any opinions
14 on that, correct?

15 A. Correct.

16 Q. And so that -- the answer to
17 breaking things out in this way might be very
18 important to the Ohio Board of Pharmacy, but you
19 wouldn't know why, true?

20 A. I know that they didn't do it.

21 Q. Well, they did do it. We're
22 looking at the responses right here.

23 A. This is one breakout that they
24 did. Right.

1 But as I mentioned before, there
2 was a difference in the proportion of
3 respondents who fit into a couple of these
4 categories. And I have no -- they offered no
5 explanation for why that would have changed
6 actually rather dramatically from the first
7 survey to the second survey.

8 Q. Right. And there could be --
9 there could be reasons that they know that you
10 don't, and no one ever asked them from Kroger
11 that --

12 A. That's right.

13 Q. -- correct.

14 A. That's right.

15 Q. It could be a lot of people just
16 got fed up of working in large chain stores and
17 moved to a different environment, true?

18 A. It actually -- it went the
19 opposite way. There was a higher proportion in
20 the second survey working in large chain grocery
21 big box stores, an increase of -- this is on
22 page 14 of my report. It was an increase of 50
23 percent.

24 Q. I'm going to ask the questions,

1 though.

2 If we go to page 11 of this study,
3 it wasn't the only question that they broke out
4 by practice group. In fact, they broke them all
5 out by practice group.

6 A. That's correct.

7 Q. Here's another example. "I feel
8 that my work environment has sufficient pharmacy
9 staffing that allows for safe patient care, by
10 practice site."

11 Correct?

12 A. That's right.

13 Q. Okay. So, in fact, all the
14 questions to the 2020 survey were broken out in
15 this way, true?

16 A. Yes, to my memory.

17 Q. And -- okay. Before I thought you
18 testified that they only did it one time. So
19 I just want to be clear that you were aware that
20 they've done it with respect to all of these
21 questions.

22 A. Correct.

23 Q. Okay. And it very well could be
24 you're willing to concede that it might be very

1 important to pharmacists and very important to
2 the Ohio Board of Pharmacy to know why in a
3 large chain grocery store sector there were so
4 many more people who felt they didn't have
5 sufficient staffing for safe patient care than
6 in the small chain pharmacy setting, correct?

7 MS. WOHL: Objection to form.

8 A. Yes, but fewer than the large
9 chain. So it supplies a context.

10 Q. It does. But I'd say that those
11 in the large chain grocery store are much closer
12 to the large chain standalone stores like CVS
13 and Walgreens compared to Kroger and Giant Eagle
14 than they are to the small independent chain
15 pharmacies, true?

16 MS. WOHL: Objection to form.

17 A. True.

18 Q. Do you know whether they track
19 metrics in small independent pharmacies versus
20 in large chain grocery stores?

21 A. No.

22 Q. Do you know anything about the
23 practices and the differences in the practices
24 between pharmacists in a small chain pharmacy

1 versus a large chain grocery store?

2 A. No.

3 MR. ELSNER: We've been going
4 quite a bit. Maybe we could take a
5 quick break and go off the record.

6 THE VIDEOGRAPHER: Going off the
7 record at 1:47.

8 (Recess taken.)

9 THE VIDEOGRAPHER: We are back on
10 the record at 2:05 p.m.

11 MR. ELSNER: A quick housekeeping
12 matter. I had marked MR 4373, which is
13 the article by Schneider, "Exploring the
14 Regional Effects of Rising Health
15 Insurance Costs on Consumers," that
16 should be Exhibit 5.

17 And then I'd like you to display
18 MR 4374, which is -- we'll mark this
19 Exhibit 6.

20 - - -

21 (Selzer Deposition Exhibit 6 marked.)

22 - - -

23 BY MR. ELSNER:

24 Q. And this is the "Iowa State

1 Planning Grant, 2005 Final Report to the
2 Secretary."

3 And if you notice on the second
4 page here, there's an acknowledgment to your
5 company in recognition that you designed the
6 survey of Iowa consumers and participated in the
7 analysis of the results.

8 Do you see that, Dr. Selzer?

9 A. I do.

10 Q. Okay. And this is the study that
11 Mr. Schneider analyzed and that was done for the
12 State of Iowa, true?

13 A. That's correct.

14 Q. Okay. There's a question I wanted
15 to ask you about. If you turn to page 14 of
16 this document, Exhibit 6.

17 TRIAL TECH: What page?

18 MR. ELSNER: 14. It's point 2 --
19 00021 in the document.

20 BY MR. ELSNER:

21 Q. Ma'am, before you get there,
22 although I don't think it's really that
23 important necessarily, but there's some
24 statistics that are there, the percentage of

1 people that responded in a certain way.

2 And then there's this section on
3 "Interpretation." And that's where the focus of
4 my question is. And it says, "Embedded in these
5 data is an unmistakable irony that as insured
6 Iowans make sacrifices to pay for increasing
7 health care costs, they're taking on greater
8 risk and increasing their personnel financial
9 vulnerability by saving less, increasing their
10 level of personal debt, reducing the scope of
11 their health insurance protection, and reducing
12 other forms of insurance coverage. However,
13 each of these elements has potential negative
14 consequences for the household and the larger
15 society."

16 Did I read that correctly?

17 A. I believe you did.

18 Q. Okay. Now, you didn't ask the
19 respondents in the survey a question about this
20 irony, true?

21 A. To be clear, I am not remembering
22 if I authored these words on this page or if it
23 was my client, Anne Kinzel, who was responsible
24 for the state planning grant who wrote this,

1 so ...

2 Q. Okay. My question's different.

3 My question is, did you ask a
4 question in the survey about this unmistakable
5 irony?

6 A. Well, this is an -- this is
7 labeled "Interpretation" because it is an
8 interpretation that goes beyond what specific
9 data points there are there to tell what the
10 story is. So we didn't ask any questions that
11 had the word "irony" in them.

12 Q. Right. And let me ask my
13 question -- well, I guess you eventually
14 answered it.

15 So you didn't ask a specific
16 question about this, but you were able to
17 interpret this irony from the results of the
18 survey that was given or someone was, Ms. Kinzel
19 or someone else, correct?

20 A. Like I said, this is 2007, I
21 believe, and I've not reviewed this. So I don't
22 have in my mind exactly what questions we did or
23 did not ask. And if I need to take a moment to
24 pull this document out of the packet, I can do

1 that.

2 Q. If it's helpful, I'm happy to have
3 you take a look, but I think you -- I think you
4 answered my question that you didn't ask this
5 specific question.

6 A. About irony?

7 Q. About irony, right.

8 A. Irony would be something we
9 interpreted from findings that are articulated
10 later.

11 What, again, was the number here?

12 42 --

13 Q. Sorry. 4374, Exhibit 6.

14 The simple point I'm making is, is
15 that often one can interpret information from
16 survey results even if the survey does not ask
17 the specific question of the respondent, true?

18 A. That the analysis makes
19 connections that seem meaningful and are
20 supported by the data. That's what analysis is.

21 Q. And oftentimes the person that's
22 going to perform that analysis, it's best that
23 they have some understanding of the underlying
24 facts or profession of those respondents who are

1 comprised of the survey, true?

2 A. Sometimes.

3 MS. WOHL: Object to form.

4 Q. Sorry?

5 A. Sometimes. Sometimes there isn't

6 a need for in-depth information about the

7 respondical [sic] under study.

8 Q. Sure.

9 But in this case with the Ohio

10 Board of Pharmacy, do you think that it would be

11 helpful to have analysis performed by an actual

12 pharmacist who's familiar with the metrics,

13 familiar with the workload conditions, familiar

14 with the tasks that a pharmacist has to perform

15 to safely perform their job?

16 MS. WOHL: Objection to form.

17 Sorry. Go ahead.

18 A. It would depend on the individual

19 pharmacist who might be doing that. Two

20 pharmacists might go at it very differently.

21 Just because they happen to be pharmacists, they

22 might not have the same approach to data. So

23 I can't answer that that would be helpful or

24 not.

1 Q. Do you think that you're --

2 A. In some cases, it might be. In
3 some cases, it might not be.

4 Q. Are you qualified, Ms. Selzer, to
5 analyze and offer an opinion as to the specific
6 metrics, the specific actions that a pharmacist
7 must take in filling a controlled substance
8 prescription to evaluate and analyze the
9 responses with respect to patient safety?

10 A. Can you repeat that because there
11 was sort of -- the second half didn't flow from
12 the first half of where I thought you were
13 going.

14 MR. ELSNER: I'll ask the reporter
15 to read it back, please.

16 (Record read back as follows:

17 "Question: Are you qualified,
18 Ms. Selzer, to analyze and offer an
19 opinion as to the specific metrics, the
20 specific actions that a pharmacist must
21 take in filling a controlled substance
22 prescription to evaluate and analyze the
23 responses with respect to patient
24 safety?")

1 A. No.

2 Q. Thank you.

3 You had mentioned a couple of
4 times today -- I think you keep wanting to pull
5 me back to this discussion about population of
6 respondents and how there's a variation. I know
7 you've wanted to talk about that, so let's talk
8 about that a second.

9 MR. ELSNER: And I'm done with
10 this document, Gina.

11 BY MR. ELSNER:

12 Q. You don't know whether there has
13 been a change in the number of pharmacists that
14 work in particular sectors in Ohio between 2000
15 and 2001, true?

16 A. I do not know.

17 Q. Okay. So it very well could be
18 that even though there's a population difference
19 with respect to responses in particular practice
20 settings, that that could, in fact, reflect an
21 accurate shift in the number of pharmacists
22 working in those sections, true?

23 A. It could. I don't know.

24 Q. And it could be that there might

1 have been more people who were sent a survey in
2 2020 than 2021, because it could be that a
3 number of pharmacists resigned from their
4 position of working in a pharmacy in Ohio as a
5 result of all the pressures they were under in
6 their work environment, true?

7 MS. WOHL: Objection to form.

8 A. It's one of many potential -- I'm
9 not seeing you on the screen, by the way, sir.
10 I don't know if that's intentional.

11 Q. No, not by me.

12 MR. ELSNER: Why don't we go off
13 the record for a second.

14 THE VIDEOGRAPHER: Off the record
15 at 2:15.

16 (Discussion off the record.)

17 THE VIDEOGRAPHER: We are back on
18 the record at 2:18.

19 BY MR. ELSNER:

20 Q. Dr. Selzer, I think your ultimate
21 conclusion is that you're not saying that the
22 results of the survey don't accurately reflect
23 the views of all pharmacists in Ohio. You would
24 just like to have more data to verify whether

1 that's true or not; is that right?

2 A. That's correct.

3 Q. Okay. And with respect to how
4 many pharmacists were working in Ohio in 2020
5 versus 2021 and whether there have been any
6 shifts in terms of primary areas of practice
7 within the field of pharmacy in Ohio, you didn't
8 obtain any data or look at any data from any
9 third-party source, correct?

10 A. That's correct.

11 Q. Okay. So you haven't looked at
12 any data that the Ohio Board of Pharmacy might
13 or might not have, true?

14 A. True.

15 Q. And you haven't looked at any data
16 that Kroger may or may not have, fair?

17 A. Fair.

18 Q. And you haven't looked at any
19 labor statistics or any other publicly available
20 publications concerning, you know, pharmacists
21 in Ohio and what their job sites are and how
22 many are currently working, true?

23 A. True.

24 Q. Now, if you were the investigator

1 in a survey, you would have done those tasks; is
2 that right?

3 A. I would have worked with my
4 client, who I would presume would have these
5 data easily available to find out what all they
6 might have that could be useful to me.

7 Q. Okay. I want to move now and
8 discuss again some information about the
9 comments. I believe that, you know, you
10 testified that the comments ran several hundred
11 pages, correct?

12 A. I don't remember the exact number
13 of pages.

14 Q. Well, I think you just referred to
15 it in your testimony as several hundred.

16 Does that sound right?

17 MS. WOHL: Objection to form.

18 A. I don't remember the number of
19 pages. I have the number of people who
20 responded, which was 1,223, to the 2021 survey.

21 Q. And how many responded to the 2020
22 survey?

23 A. 1,412, 1,412.

24 Q. What percentage of the respondents

1 to the 2020 survey offered a comment?

2 A. Well, I should get my calculator
3 out.

4 Q. Does 34 percent sound about right?

5 A. Really, I should get my
6 calculator. I'm trained not to do that just off
7 the top of my head. So if you tell me what
8 you've used as a numerator and a denominator, I
9 can validate that yes or no.

10 Q. Well, we looked at the total
11 number of responses to each survey, and then we
12 calculated the number of comments.

13 A. So on the 2020 survey --
14 I don't -- there were -- yeah, this is -- it's
15 confusing because they have a publication date,
16 as well as the date that it was conducted. So
17 the most recent survey, there were 2,969
18 respondents. And as I mentioned, there were
19 1,223 who commented.

20 Q. Right. And so for the 2021
21 survey, that would be about 41 percent, correct?

22 A. Yeah. It's a little -- it's
23 certainly more than 33 percent, but I don't know
24 how close it is to 40 percent, without a

1 calculator.

2 Q. That's 41 percent. Originally we
3 were asking you about the 2020 survey. And for
4 that, there were 4,159 responses, and 1,412
5 wrote comments.

6 A. That's correct.

7 Q. And that's about 34 percent.

8 Sound about right?

9 A. That sounds about right.

10 Q. Assuming those percentages are
11 right, is that a significant number of people
12 providing a comment to a survey?

13 A. That would vary widely with the
14 survey and what kind of comments were requested.
15 There is no industry standard for what
16 proportion of respondents typically comment when
17 invited.

18 Q. There is none?

19 What's the -- how many -- have you
20 ever done a survey that asks people how they
21 felt about different things and then offered an
22 opportunity for a comment?

23 A. We try not to, so very rarely. In
24 a very particular circumstance.

1 Q. Why not?

2 A. Because open-ended comments are
3 difficult to analyze and say what they mean. So
4 there's all sorts of things that are affecting
5 what they write and who writes, and very little
6 commonality across comments.

7 So you want to sort of extract
8 meaning, and you end up with little single
9 percentage points of people who mentioned this
10 or people who mentioned this, and it doesn't end
11 up being useful. And it's very expensive in a
12 telephone interview to offer time up for people
13 to just start talking.

14 Q. What about in an interview -- in a
15 survey like this, an electronic survey?

16 A. Right. In a survey like this,
17 it's understandable certainly for somebody to go
18 through, but it would be here a massive
19 undertaking to try to code the comments and say,
20 "Okay. Well, among these people who commented,
21 23 percent talked about this, this, or the other
22 thing."

23 And I think our little exercise
24 with searching shows that you don't get very

1 much conformity across comments.

2 For this, which is a Board talking
3 to its licensees, that would potentially have
4 more utility, but it's on an anecdotal basis.
5 So as a researcher, anecdotal, not as helpful.

6 Q. Did you actually compare all the
7 survey comments to see if there was a consistent
8 response that pharmacists did not feel that they
9 had adequate staffing to perform their duties in
10 a safe and effective manner?

11 A. We -- no.

12 Q. So there wasn't really an
13 effort -- and I appreciate there wasn't a lot of
14 time -- to go through all the comments from
15 these surveys to see if there were consistent
16 responses among the comments, correct?

17 A. On any topic. The closed-ended
18 questions I think were clear about where they
19 stood on having enough time. So there wouldn't
20 have been a need to look to the comments to get
21 a feel for that.

22 Q. Have you ever conducted a survey
23 electronically like this where you sought
24 comments from respondents?

1 A. Yes.

2 Q. And what was the response rate or
3 the number of people who provided a comment
4 versus the number of people who completed the
5 survey?

6 A. Off the top of my head, I cannot
7 tell you.

8 Q. Do you think it reached
9 40 percent?

10 A. It could have. The survey I'm
11 thinking about was conducted on behalf of one of
12 my clients among its clients. So they were
13 interested on a client-by-client basis in what
14 they might comment in addition to the questions
15 we asked.

16 Q. It seemed to me, in reviewing the
17 comments, that pharmacists who provided a
18 comment felt very strongly about their views.

19 Did you get that impression in
20 reviewing the comments?

21 A. Certainly some, and maybe most.
22 There was some strong language in some of the
23 comments.

24 Q. And did you evaluate the strength

1 or passion contained in the survey comments when
2 considering the overall survey results? Did it
3 have any factor in your analysis?

4 A. No.

5 Q. Do you agree with me that a
6 pharmacist who admits in a survey of having made
7 mistakes when dispensing, adds creditability to
8 their response?

9 A. To their response what? To the
10 closed-ended questions?

11 Q. Well, both to the closed-ended
12 questions and to the comment. The fact that
13 they would admit to their regulator that they
14 made an error in the dispensing of a medication,
15 does that make their response more or less
16 credible or have no bearing, in your opinion?

17 A. Well, it is common that an
18 utterance against interest tends to be credible.
19 So I don't disbelieve them as an individual, but
20 that's -- I don't know that I care as a
21 researcher. That wasn't part of the analysis
22 that I did.

23 Q. You did review the comments with
24 respect to Kroger. And I want to show you one

1 of them here, if we could, MR 4202, comment 152.

2 This is in Exhibit 4.

3 A. If it mentions -- well, go ahead.

4 Q. Go ahead.

5 A. Well, I was just trying to be
6 helpful, which I've been instructed not to be.

7 But this is from 2020 -- the 2020
8 survey with no identification of respondent
9 numbers. And for the ones that we pulled, we
10 included a respondent number for the ones that
11 we pulled, which we would have pulled for
12 Kroger, so ...

13 Q. Okay. Hold on one second. I'm
14 just going to pull it out here.

15 I'm going to refer you to the top
16 comment here, and it begins, "The monthly report
17 names each pharmacist, and those on the bottom
18 had to write an action plan, but those who have
19 100 percent success and unrealistic numbers
20 never get questioned. This is Kroger, and the
21 workload is unrealistic and unsafe.

22 "The work environment is creating
23 a whole new generation of sloppy pharmacists
24 that are sometimes flat-out dangerous. We are

1 timed on every move we make. Safety and ethics
2 are out the door."

3 Did you review this comment?

4 A. Yes. And it's included in the
5 report.

6 Q. And it references here that
7 "I hope the Board of Pharmacy makes every
8 pharmacy close for lunch, like Nevada, and you
9 must leave the pharmacy during that time. If we
10 don't have to leave, then we will work up
11 working through it, and I say this is Kroger.
12 Please do something to help us, our patients,
13 please."

14 Did you look across the comments
15 in the surveys to determine how many pleas there
16 were of help to the pharmacy board to take some
17 kind of action with respect to metrics,
18 understaffing, and safe patient care?

19 A. No.

20 Q. Were you aware that Kroger
21 pharmacists, before reading these comments, were
22 not able to take a lunch break at the time these
23 surveys were taken?

24 A. Not specifically.

1 Q. Do you agree with me that this
2 particular comment makes reference to unsafe
3 workload conditions?

4 A. It refers to the experience of
5 this pharmacist -- the report of this pharmacist
6 in things that are potentially unsafe. Yes.

7 Q. And this is consistent with
8 responses of other pharmacists in large chain
9 grocery stores, some 73 percent of which felt
10 that the staffing levels were inadequate and did
11 not permit safe patient care, correct?

12 MS. WOHL: Objection to form.

13 A. There was a question asked about
14 that, and the responses indicated that that was
15 a majority response who felt that staffing
16 levels led to unsafe practices.

17 Q. Okay. And if I could have you
18 turn to comment 1 in the 2022 survey, which
19 we'll mark as the next -- sorry. 2021 survey
20 which we'll mark as the next exhibit, MR 4201.
21 This is Exhibit 7.

22 - - -

23 (Selzer Deposition Exhibit 7 marked.)

24 - - -

1 BY MR. ELSNER:

2 Q. This is comment 1 on page
3 4201.00095. It's the very first response of the
4 2021 survey comment?

5 It reads, "I had to quit my job at
6 Kroger after almost 15 years because I felt like
7 I could no longer safely use my license.
8 Division leaders and management will do
9 everything in their power to ignore you. When I
10 quit, my division leader for Kroger acknowledged
11 that stress and workload were higher than ever,
12 then accepted my resignation without any attempt
13 to fix any of the problems."

14 Were you aware and have you done
15 any kind of analysis to determine how many
16 people in the survey commented that they felt
17 unsafe and that their license were at risk given
18 the work conditions that they were operating
19 under?

20 A. We did not do that analysis.

21 Q. You did review this particular
22 comment because it referenced Kroger, correct?

23 A. That's right.

24 Q. You described the workplace survey

1 conducted by the Ohio Board of Pharmacy in your
2 report as "ordinary workplace challenges,"
3 correct?

4 A. What page are you on?

5 Q. Page 2, last line of the first
6 paragraph, under the "Executive Summary."

7 MR. ELSNER: It's .004, Gina. Oh,
8 sorry. We're MR 4370, Exhibit 3.

9 A. I'm searching for the word
10 "ordinary." Can you help me with that?

11 Q. Absolutely.

12 The first sentence under Executive
13 Summary. "As described in the 2020 study, this
14 survey is about workload, stress, job
15 responsibility, and ordinary workplace
16 challenges."

17 Do you see that?

18 A. I do.

19 Q. Do you believe that the comments
20 to the surveys in 2021 and 2022 reflect ordinary
21 workplace challenges?

22 A. It includes ordinary workplace
23 challenges.

24 Q. How would you describe the results

1 of the survey if not just ordinary workplace
2 challenges?

3 A. Well, I might not understand your
4 question. It's -- I cite right after that
5 that -- quoting from the State Board -- State of
6 Ohio Board of Pharmacy that "The intent was to
7 capture feedback on pharmacists' working
8 conditions in the state."

9 That's what they set out to do.

10 Q. Okay. And would you agree with me
11 that the working conditions expressed by the
12 pharmacists who responded to the survey in the
13 comments reflected something far more serious
14 than ordinary workplace challenges?

15 MS. WOHL: Objection to form.

16 A. Yeah, I don't know.

17 Q. Well, you've read at least the
18 Kroger comments. And this particular comment
19 that we looked at, number 1, "I had to quit my
20 job because I felt like I could no longer safely
21 use my license," does that sound like an
22 ordinary workplace challenge to you?

23 MS. WOHL: Objection to form.

24 A. That is anecdotal as a single

1 pharmacist. So I can't speak -- I can't
2 generalize from that one to say this is a survey
3 about extraordinary workplace challenges.

4 Q. Well, does it feel like an -- is
5 it an extraordinary workplace challenge, in your
6 opinion, for this particular pharmacist?

7 MS. WOHL: Objection to form.

8 A. You're asking me to comment on a
9 single pharmacist's comment. Is that -- do I
10 have that correct?

11 Q. We're going to start there.

12 A. Start there. This is a pharmacist
13 with -- who quit a job over things that were
14 problematic.

15 Q. So problematic that they felt they
16 could no longer safely use their license in that
17 work environment. That, to me, doesn't sound
18 like an ordinary workplace. It seems like an
19 extraordinary problem in a workplace.

20 Would you agree with that?

21 MS. WOHL: Objection to form.

22 A. Compared to what? This is the way
23 a researcher thinks. So what other industries
24 might there be people giving up -- fearing for

1 their license? I don't know. So I don't know
2 whether to -- that that's the bigger problem or
3 common across other industries. I do not know.

4 Q. Well, how does it compare to those
5 in individual pharmacies as opposed to chain
6 pharmacies?

7 A. We don't separate the comments by
8 whether they're at a large chain or whether
9 they're at a small chain or independent. We
10 have no --

11 Q. Do you see any independent
12 pharmacy comments in the comments that you read
13 that were concerned about losing their license
14 because they worked in an unsafe place?

15 MS. WOHL: Objection to form.

16 A. I don't know, because the comments
17 were not coded according to what workplace was
18 there. This person, this pharmacist,
19 volunteered that information.

20 Q. Now, I'm showing you one example,
21 but we've looked at several today, and there are
22 many in there.

23 MR. ELSNER: Let's pull another
24 one. If we go back to the 2020 survey,

1 page 97.

2 Sorry .0097, MR 4202, Exhibit 4.

3 TRIAL TECH: What were the last
4 two digits?

5 MR. ELSNER: 97.

6 BY MR. ELSNER:

7 Q. Dr. Selzer, if you look at the
8 first comment there, "I've only worked for
9 Kroger since November of 2019, and in the last
10 two to three months, our tech and pharmacist
11 hours have been cut to a ridiculously unsafe
12 level. I've voiced my concerns to my bosses,
13 and their response is we need to 'earn' more
14 hours with more clinical work."

15 Do you know what that means, "earn
16 more hours with more clinical work"?

17 A. No, I do not.

18 Q. It says, "Our store is 20 percent
19 busier than last year and we're the fastest
20 growing Kroger pharmacy in the area, but they do
21 not care. All they care about is metrics, ready
22 rates, and MTMs."

23 Do you know what a "ready rate"
24 is?

1 A. I do not.

2 Q. Do you know what an "MTM" is?

3 A. I may have read something in some
4 other comment, but I don't recall.

5 Q. -- "that we have no time to do.
6 I hope you at the Board actually do something
7 and make changes in our industry. These chains
8 are out of control, and no one has the guts to
9 stop them.

10 "The physical and mental health of
11 our pharmacists and techs are being severely
12 damaged, and the risk to patient health is at an
13 all-time high. Something needs to be done to
14 save our profession. I would like my job
15 again -- I would like to like my job again."

16 Do you see that?

17 A. I do.

18 Q. And you read this comment,
19 correct?

20 A. I did.

21 Q. Is this an ordinary workplace
22 challenge, in your opinion?

23 A. I don't know what is the reason
24 for this extraordinary -- I would say it seems

1 extraordinary, but I don't know that I can
2 identify the reason.

3 Q. The reason why it's extraordinary,
4 or the reason why this pharmacist is upset?

5 A. The reason why the pharmacist is
6 feeling that it's a ridiculously unsafe level.

7 Q. Okay. Well, he has some clues
8 here. One is, "I voiced my concerns to my
9 bosses, and their response is we need to 'earn'
10 more hours with more clinical work."

11 But you don't know what that
12 means, right?

13 A. That's right.

14 Q. And then his other response is,
15 "My store is 20 percent busier than it was last
16 year and we're the fastest growing pharmacy in
17 the area, but they don't care."

18 Do you know what that means?

19 A. I have an idea. It's what is
20 the -- what is it that is the antecedent for
21 this. And that's not the question you've asked
22 me, so I'm a little bit without an answer for
23 you.

24 Q. And the unsafe level is also

1 reflected in the third comment. "All they care
2 about is metrics, ready rates, and MTMs that we
3 have no time to do."

4 But you don't know what the
5 metrics are, right?

6 A. That's right.

7 Q. And you don't know what the ready
8 rates are?

9 A. That's right.

10 Q. And you don't know -- or if you
11 did at one time, you don't now remember what
12 MTMs are, right?

13 A. That's right.

14 Q. And then there's a plea to the
15 Board to make changes to the industry in this
16 comment, true?

17 A. True.

18 Q. And does that seem to you like a
19 common workplace challenge?

20 A. Again, this is a single pharmacist
21 saying this, and so does that mean that the bulk
22 of the pharmacists were thinking along those
23 lines? I don't know.

24 So, again, the temptation is to

1 take one person and say that's reflecting
2 everybody. And as a researcher, I'm trained not
3 to do that.

4 Q. And you didn't analyze how many
5 people in their comments also requested that the
6 Board of Pharmacy make changes to the industry,
7 true?

8 A. I did not.

9 Q. And we've looked at least one or
10 two of those, so it's not just one.

11 It says also, "The physical and
12 mental health of your pharmacists and techs are
13 being severely damaged, and the risk to patient
14 health is at an all-time high."

15 Does that sound like an ordinary
16 workplace challenge to you?

17 A. Again, a single person saying this
18 doesn't define the whole survey as whether the
19 majority of the questions asked were about
20 ordinary workplace issues.

21 Q. Did you analyze how many comments
22 from pharmacists to the survey reflected
23 concerns about their personal health and their
24 patient's health?

1 A. We did not do a search on
2 "health."

3 Q. So you don't know how many
4 pharmacists responded in the same way, that they
5 feel both physically and mentally at health risk
6 because of their work, correct?

7 A. The answer is I don't know. That
8 was not my assignment.

9 Q. You didn't do that search?

10 A. That was not my assignment.

11 Q. Well, you didn't take it to be
12 your assignment? You didn't do that search,
13 correct?

14 A. It is not my assignment. My
15 assignment was to look at the role of
16 pharmacists and pharmacies in opioid diversion
17 and abuse.

18 Q. And you do not believe there's a
19 correlation or a connection between the physical
20 and mental health of the pharmacist and the risk
21 to the patient's health being at an all-time
22 high? There's no connection between that and
23 opioids or controlled substances, true?

24 MS. WOHL: Objection.

1 A. There is no connection in the data
2 presented to me. There is no data connection
3 between those.

4 Q. There's no connection because you
5 don't know what all of the job responsibilities
6 are, the metrics, and the requirements that each
7 pharmacist must perform in doing their job
8 responsibilities, correct?

9 MS. WOHL: Objection to form.

10 A. I think my answer is correct.
11 There is a question about metrics that we've
12 already discussed.

13 MR. ELSNER: Can you read my
14 question back?

15 (Record read back as follows:

16 "Question: There's no connection
17 because you don't know what all of the
18 job responsibilities are, the metrics,
19 and the requirements that each
20 pharmacist must perform in doing their
21 job responsibilities, correct?"

22 A. Would you like me to reanswer the
23 question?

24 Q. Yes, please.

1 A. The question before was about a
2 connection between what are the things they're
3 talking about in terms of metrics and how that
4 would relate to opioid abuse.

5 And my answer is that we have no
6 data driven connection between those. It may
7 exist in the real world. These data do not
8 provide evidence of it. Could exist, might not
9 exist, but the data do not connect these things.

10 Q. And you don't know, in reading the
11 response to this comment, whether this comment
12 reflects a concern about dispensing of
13 pharmaceuticals, correct?

14 A. I don't believe there's
15 mentioned -- the word "dispensing," I don't
16 believe, correct me if I'm mistaken, is in this
17 comment.

18 Q. Okay. And because the word
19 "dispensing" isn't there and "opioid" isn't
20 there and "controlled substances" isn't there,
21 there's no data that you can analyze, you cannot
22 review this comment to make a determination that
23 it has any connection with opioids and
24 controlled substances, true?

1 A. True.

2 MR. ELSNER: Let's go off the
3 record.

4 THE VIDEOGRAPHER: Off the record
5 at 2:49.

6 (Recess taken.)

7 THE VIDEOGRAPHER: We are back on
8 the record at 2:58 p.m.

9 MR. ELSNER: Thank you very much,
10 Dr. Selzer. I don't have any further
11 questions at this time.

12 I'm now going to pass the witness.

13 - - -

14 REDIRECT EXAMINATION

15 BY MS. WOHL:

16 Q. Hi, Dr. Selzer.

17 A. Hello.

18 Q. I do have a couple of questions
19 for you.

20 First, we heard some questions
21 about the difference between the respondents in
22 their primary practice settings in the 2020 and
23 2021 survey.

24 Do you recall that line of

1 questioning?

2 A. I do.

3 Q. Would you turn to page 14 of your
4 report, please.

5 A. Yes.

6 Q. Is Figure 1 a comparison of how
7 the respondents of each survey responded to
8 their primary practice settings and where they
9 reported they worked?

10 A. Yes.

11 Q. And with respect to the large
12 chain grocer, big box stores, what is -- is
13 there something notable about the difference
14 between the 2020 respondents and 2021
15 respondents?

16 A. Yes. This is -- this is a
17 difference that would fall outside of any margin
18 of error that might be computed here, so your
19 eye is naturally drawn to it. And it was
20 24 percent who said that was their primary
21 practice setting in the earlier survey.

22 And the next year, that had grown
23 to 36 percent. That's a 12-point difference,
24 which is half of the 24 from the earlier year.

1 So a 50 percent increase in the pharmacists
2 responding to this survey who were practicing in
3 large chain grocer, big box stores.

4 And for the others, with the
5 exception of hospitals which had a decrease of
6 I think 26, 27 percent fewer, saying that they
7 were practicing in hospitals. The other
8 categories are pretty similar. So that was
9 noteworthy.

10 And I don't know if one or the
11 other is correct or if neither is, or if both,
12 that that was real change.

13 Q. But it's possible in looking at
14 this data that people were actually leaving one
15 practice setting and going to the large chain
16 grocer or big box store?

17 MR. ELSNER: Objection.

18 A. They could be leaving one, but
19 it's a different respondent pool. So it goes to
20 the question of whether the distribution is
21 accurate or whether that it reflects real
22 change, and we don't know.

23 Q. Are you aware -- let me ask you
24 this: The 2020 and 2021 surveys, these were

1 performed in the midst of the global Corona
2 virus pandemic, correct?

3 MR. ELSNER: Objection.

4 A. That would be consistent with the
5 dates.

6 Q. Are you aware of added pressures
7 that the pandemic created for health care
8 professionals, including pharmacists?

9 A. I'm not professionally aware.

10 Q. Anecdotally or in, you know, just
11 what you've heard or read are you aware?

12 A. Anecdotally, yes.

13 Q. Now, just as we can't include or
14 exclude the fact that, you know, opioid
15 dispensing may have been on pharmacists' minds
16 in performing this survey or filling out this
17 survey, is that also true of COVID?

18 A. Yes, with the caveat that we
19 performed a word search across a number of
20 categories looking at the substance of the
21 complaint and the language that was used there
22 to see how many pharmacists were referencing
23 those issues and those concerns.

24 And just by way of -- the numbers

1 were relatively small, maybe two, maybe six,
2 maybe twelve respondents might have mentioned
3 any of these, but the researchers are always
4 asking "Compared to what?"

5 So we did a search on COVID in the
6 2021 survey, and that it appeared in comments
7 345 times. So a far different incidence of that
8 than we found for any of the opioid-related
9 searches that we did.

10 Q. So the questions, none of them
11 specifically mention COVID or opioids or
12 controlled substances, but the comments,
13 particularly with respect to COVID and pandemic,
14 did; is that right?

15 A. That's right. So that gave me
16 sort of a control group to say if the survey has
17 minimal support that pharmacists had opioid
18 diversion and abuse on their mind, how does that
19 compare to COVID.

20 And there's more evidence that --
21 there were more pharmacists who mentioned COVID
22 in the course of their comments. And so that
23 helped me sort of think about the relative
24 absence of comments mentioning opioid diversion

1 or abuse.

2 Q. So at least with respect to the
3 commenters, would you say that COVID or the
4 pandemic -- COVID was on the minds of those
5 people who offered up comments more than any of
6 the other terms related to opioid diversion and
7 dispensing that you searched?

8 MR. ELSNER: Objection.

9 A. That I searched, correct.

10 MS. WOHL: Could we go off the
11 record.

12 THE VIDEOGRAPHER: Off the record
13 at 3:04 p.m.

14 (Recess taken.)

15 THE VIDEOGRAPHER: We are back on
16 the record at 3:07 p.m.

17 MS. WOHL: Dr. Selzer, I do not
18 have any further questions for you.

19 - - -

20 RECROSS-EXAMINATION

21 BY MR. ELSNER:

22 Q. Dr. Selzer, just a quick one or
23 two follow-ups.

24 With respect to the respondents

1 and your chart on page 14 of your report that
2 you were just referring to, you're looking here
3 at the percentage changes in the large chain
4 grocery store responses between 2020 and 2021,
5 correct?

6 A. That's right.

7 Q. Okay. So what you're doing is
8 you're comparing the total number of people who
9 responded to the surveys each year to how many
10 identified as having worked in a large chain
11 grocery store, even though they could be lying,
12 true?

13 A. I'm sorry. What was the last past
14 part? Could you repeat?

15 Q. That was kind of a joke.

16 What you did here was you compared
17 the number of total respondents to the 2020
18 survey and what percentage of those respondents
19 identified as having worked in a large chain
20 grocery store, and then did the same thing for
21 2021, correct?

22 A. That's right.

23 Q. You didn't actually look at the
24 number of actual respondents who identified as

1 having worked in a large chain grocery store,
2 correct?

3 A. I would have had that data in
4 2020. I don't believe I had the raw numbers for
5 2021. I might be mistaken.

6 Q. If you look at MR 4202, page 23,
7 Exhibit 4.

8 MR. ELSNER: Sorry, Gina. 4202.
9 BY MR. ELSNER:

10 Q. You see here that the responses to
11 the question "What is your primary practice
12 site," Large Chain Grocer is 1,000, correct?

13 A. That's right.

14 Q. Okay. So we know the number for
15 2020 is 1,000.

16 MR. ELSNER: Could we go back to
17 the large chain part of her report on
18 page 14, Gina. It's Exhibit 3, page 16.

19 There it is. All right. Could we
20 blow that up a bit.

21 BY MR. ELSNER:

22 Q. So the actual number of people who
23 responded and identified as working in a large
24 chain grocery store in 2020 was 1,000.

1 MR. ELSNER: Can we write 1,000
2 next to that 24 percent.

3 Does that exceed our capacity to
4 do that, Gina?

5 TRIAL TECH: Let me see if I can
6 get that. Keep going. And you want
7 1,000 near the 24?

8 MR. ELSNER: Yes, ma'am.

9 TRIAL TECH: Okay.

10 MR. ELSNER: Perfect. Thank you.

11 BY MR. ELSNER:

12 Q. And then if we look at the 2021
13 results on page 4, which is 4201, large chain
14 grocery box store pharmacists identified
15 themselves that way 1,071, correct?

16 A. I'm not seeing it on what she's
17 showing. There it is.

18 Okay.

19 Q. So by that 36 percent, we should
20 write 1,071.

21 So the number of people that
22 actually changed between 2020 and 2021 was an
23 addition of 71 people, correct?

24 A. This only makes sense in the

1 context of how many respondents overall were
2 there. And at the bottom of the chart, you see
3 that the end in 2020 was 4,154, and it was a
4 smaller respondent base.

5 So this is why you do this, which
6 is that it's the proportion of those who
7 answered the survey that is what's meaningful
8 here. And this is why I've tried to make clear
9 the importance of this, is that in terms of the
10 distribution of the responding pharmacists by
11 their primary practice settings, we don't know
12 if the distribution in 2020 is more accurate to
13 the real world or that the distribution in 2021
14 is more accurate as a proportion of the
15 responding pharmacists.

16 Whether there were more or less
17 doesn't really matter if you've got only about a
18 third -- if you've got a third less roughly
19 responding in the second year as before.

20 Q. That's only in comparison with the
21 total universe. The actual number of people
22 that identified as working in a large chain
23 grocery store setting is only increased 71
24 people total, not some 50 percent, correct?

1 A. No, that's not correct. The
2 proportion of those responding were 1,000 of
3 4,000 and some in 2020. In 2021, it was roughly
4 1,000 out of about 3,000 responding.

5 So that's the context for
6 understanding the rule. You had in the 2020
7 survey a more prominent -- I'm sorry -- a less
8 prominent response base among those who said
9 they were working in large chain stores.

10 It's bigger. It's more -- the
11 final results, the overall results, are informed
12 more in the second survey by those working in
13 that setting. And if we knew what was true in
14 the real world, we could have adjusted it.

15 Q. Well, all of your assumptions are
16 assuming that what matters is the total
17 universe, but if you're focused only on the
18 responses in the large chain grocery store
19 setting, then the number of people who responded
20 is fairly similar, and we can analyze those
21 results fairly consistently between the 2020 and
22 the 2021 survey, correct?

23 A. This is not the way researchers
24 would think about that.

1 Q. Well, I mean, I don't understand
2 why not. If I want to know how many people in a
3 large chain grocery store were concerned about
4 having adequate staff to complete their job, why
5 would it matter how many in a small chain
6 grocery store felt, or in a hospital, or in a
7 long-term care facility?

8 It wouldn't matter would it?

9 A. In that particular instance, it
10 wouldn't. But the bigger question is, within
11 that group, what are the demographic
12 distributions.

13 So we didn't know if 1,000 one
14 year are identical virtually to the 1,071 in the
15 second year. We don't know if there were other
16 things that were influencing that difference in
17 response rate. So you can't just take 1,000
18 here, 1,000 there, and say they're equivalent.
19 Researchers would not do that.

20 Q. What is the difference in the
21 response rate between 2020 and 2021 for those
22 who worked in large chain grocery stores?

23 A. In the response rate? Well, I
24 think you -- I think I would need to do some

1 higher mathematics here and algebra potentially.

2 What this is showing, and I think
3 most clearly, is that the people in that
4 category made up a higher proportion of people
5 answering than they did before.

6 Q. Yeah, but that's only -- okay.

7 But that might be true --

8 A. I'm sorry. The --

9 Q. -- but the actual number of people
10 who responded between one survey and the next
11 was very consistent in terms of the numbers,
12 true?

13 A. But the point is fewer responded,
14 so they are disproportionally potentially
15 overrepresented in the second year than the
16 first year. And because we do not know how many
17 people from large chain grocery stores -- box
18 stores were invited to the survey, that would be
19 our denominator for calculating the response
20 rate using the 1,000 or 1,071, but that's
21 unknown. We don't know that.

22 Q. Why do you assume that there were
23 more people who were sent the survey that worked
24 in a large chain grocery store when the number

1 of people that actually responded are so similar
2 between 2020 and 2021?

3 A. Because the actual number of
4 people who responded at all is different between
5 the two surveys.

6 Q. But that shows that there was a
7 disproportionate number of people that responded
8 in other practice areas, not in the large chain
9 pharmacy setting, because we know the actual
10 number of respondents is only 71 apart, correct?

11 A. Which is a meaningless number,
12 because we don't know if that's a bigger
13 response rate overall of the 20 percent or a
14 smaller response rate. We don't have the data
15 to make that calculation. You want to say 1,000
16 is 1,000, and I say only -- you can only
17 understand that in the context of what
18 proportion of all respondents they make up,
19 so --

20 Q. Unless I'm only concerned --
21 MS. WOHL: Let her finish.

22 Q. Please continue, Dr. Selzer.

23 A. So in 2020, those working in the
24 bigger box stores and grocers were a smaller

1 proportion of all than they were in 2021. The
2 fact that they happened to be equal numbers is
3 coincidental.

4 The importance of it is that there
5 was a difference between the two surveys, and
6 potentially a meaningful difference. We don't
7 know why this is, how it came to be. The report
8 is silent on it. But it's true that the 2021
9 survey has more representation from this group
10 proportionately than the previous survey.

11 Q. But not in actual numbers. And if
12 what we're really concerned about is the
13 responses of those who worked in a large chain
14 grocery store like Kroger, who's the defendant
15 in this case, then the more relevant factor is,
16 is the number of respondents between 2020 and
17 2021 significantly different, and the answer to
18 that is no, correct?

19 A. That's not correct.

20 The point is that's only part of
21 the story. This is a story about what data we
22 have and what data we do not have.

23 So within that category, there
24 might have been differences in terms of who

1 responded by the position that they served in,
2 by how many hours a week they worked, by how
3 many years they've been there. We don't know.
4 So we don't know if they -- if this 1,000 is
5 identical to this 1,000 in meaningful ways. We
6 do not know.

7 Q. From the data, can you determine
8 that more individuals, pharmacists, working in
9 the large chain grocery store setting, more than
10 71, actually received and responded to the
11 survey?

12 A. We do not know that.

13 Q. It could be the exact same, except
14 for a 71-percent difference, correct?

15 A. That were invited? Is it --

16 Q. Not that were invited. It shows
17 that participated.

18 A. I think I need you to repeat that
19 question.

20 Q. Well, you don't know how many
21 people who work in a large chain grocery store
22 setting were invited to participate in the
23 survey in 2020 or 2021, correct?

24 A. That's correct.

1 Q. So that number could be exactly
2 the same? It's possible, correct?

3 A. It's possible.

4 Q. I'm sorry?

5 A. It's possible.

6 Q. And, in fact, the only thing we do
7 know is that 1,000 people responded in 2020, and
8 1,000 people responded in -- 1,071 responded in
9 2021 and identified themselves as having worked
10 in a large chain big box store, correct?

11 A. Correct.

12 Q. And that is not a 50 percent
13 difference between the two, is it?

14 A. No. It's a 50 -- sorry.
15 50 percent, 36 percent compared to 24 percent.
16 It is a proportionate difference of 50 percent.
17 It's 12 percentage points difference.

18 Q. But that's in comparison with all
19 the respondents, not in comparison with only
20 those who identified themselves as large chain
21 grocery stores.

22 A. But, again, what is meaningful
23 about this is that there's a difference in
24 distribution here. And what we do not have is

1 information on any other differences across
2 categories or within the one category that might
3 be meaningful. We don't know.

4 Q. We do know that in 2021, there
5 were 509 pharmacists who responded to the survey
6 who worked in a large chain grocery box store
7 that felt that their work environment did not
8 have sufficient pharmacy staffing to allow for
9 safe patient care, true?

10 A. I don't have the 509.

11 Q. It's right on the screen.

12 A. The strongly disagree. Okay.

13 Q. And we do also know that 369
14 people disagreed that they had sufficient
15 pharmacy staffing to allow for safe patient
16 care, correct?

17 MR. ELSNER: Sorry. The one above
18 it.

19 A. Yes.

20 Q. And so we know at least for the
21 strongly disagree and disagree, that there are
22 at least that many pharmacists in the State of
23 Ohio who work in large chain grocery stores who
24 felt that there was not sufficient staffing for

1 safe patient care, correct?

2 A. Correct.

3 Q. And that in and of itself is a
4 piece of data that is meaningful, true?

5 A. True.

6 Q. And, in fact, knowing that over
7 800 different pharmacists that are working in a
8 grocery store setting feel that they don't have
9 enough staff to safely care for the patients in
10 the State of Ohio is a data point that might be
11 relevant to the Ohio Board of Pharmacy, true?

12 A. True.

13 Q. And you don't know if it's
14 relevant or not; is that right?

15 A. It said "might," so it might.

16 Q. And you, because that's outside
17 your expertise, don't know whether that is a
18 meaningful number or not, correct?

19 MS. WOHL: Objection to form.

20 A. You're looking at the raw numbers,
21 and I would look at the percentages. And even
22 so, it's a large percentage. It's nearly half
23 who say strongly disagree.

24 Q. And regardless of whether you look

1 at the percentages or if you look at the raw
2 numbers. But if you look at the raw numbers,
3 that's over 800 pharmacists who are dispensing
4 thousands and thousands of medications in the
5 State of Ohio who feel that the environment in
6 which they're working is unsafe to the patients,
7 true?

8 A. I would say that's the answer
9 that's given here.

10 MR. ELSNER: Thank you,
11 Dr. Selzer. I don't have any further
12 questions.

13 MS. WOHL: I do not have any
14 further questions.

15 Dr. Selzer will read and sign.

16 MR. ELSNER: Thank you very much.

17 THE VIDEOGRAPHER: With no
18 additional questions, that concludes
19 today's deposition. The time is
20 3:25 p.m.

21 MR. RACHLIN: Carol, can I get a
22 draft copy of the transcript?

23 THE COURT REPORTER: Of course.

24 (Signature reserved.)

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Thereupon, at 3:25 p.m., on

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Friday, January 20, 2023, the deposition was

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concluded.

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CERTIFICATION

I, Carol A. Kirk, Registered Merit Reporter and
Certified Shorthand Reporter, do hereby certify that
prior to the commencement of the examination,
J. ANN SELZER was duly remotely sworn by me to testify
to the truth, the whole truth, and nothing but the
truth.

I DO FURTHER CERTIFY that the foregoing is a
verbatim transcript of the testimony as taken
stenographically by me at the time, place, and on the
date hereinbefore set forth, to the best of my
ability.

I DO FURTHER CERTIFY that I am neither a
relative nor an employee nor attorney nor counsel of
any of the parties to this action, and that I am
neither a relative nor employee of such attorney or
counsel, and that I am not financially interested in
the action.



Carol A. Kirk, RMR, CSR
Notary Public

1 DEPOSITION ERRATA SHEET

2

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4 Case Caption: National Prescription Opioid Litigation
Case Track 7

5

6 DECLARATION UNDER PENALTY OF PERJURY

7

8 I declare under penalty of perjury that I
9 have read the entire transcript of my deposition taken
10 in the captioned matter or the same has been read to
11 me, and the same is true and accurate, save and except
12 for changes and/or corrections, if any, as indicated
13 by me on the DEPOSITION ERRATA SHEET hereof, with the
14 understanding that I offer these changes as if still
15 under oath.

16

17

J. ANN SELZER

18

19 SUBSCRIBED AND SWORN TO

20 before me this _____ day

21 of _____, A.D. 20____

22

23 _____
Notary Public

24

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24	J. ANN SELZER		